

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative and Judicial Review Branch**

AJ Mini Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0256302

FINAL AGENCY DECISION

It is the final decision of the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) that there is insufficient evidence to support the assessment of a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** fine against AJ Mini Market for the unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits (also referred to as EBT benefits). Therefore, the determination made by FNS's Retailer Operations Division is reversed and the fine is dismissed.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it assessed an unauthorized acceptance fine against AJ Mini Market.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that "[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS."

CASE CHRONOLOGY

On March 28, 2022, the Appellant submitted a SNAP retailer application for the purpose of accepting SNAP benefits at its location. At the time of the application, a retail store was already authorized to accept SNAP at the same location. That store had been authorized in SNAP since March 2005.

The record further shows that the Appellant did not complete the application process. Accordingly, the application was withdrawn in agency records effective May 5, 2022.

On April 15, 2022, the Retailer Operations Division sent the applicants a letter stating that their store had not been authorized to accept SNAP benefits, but was accepting them anyway. According to the letter, such unauthorized acceptance of SNAP is a violation of the Food and Nutrition Act of 2008, as amended, and corresponding SNAP regulations. The letter further stated that regulations at 7 CFR § 278.6(m) give FNS the authority to impose a fine against any firm that illegally accepts SNAP benefits. The record shows that the letter was delivered to the Appellant's store via UPS on April 22, 2022.

Included in the April 15 letter was a cease and desist agreement, which the Appellant was asked to sign and return to FNS. The agreement stated, in part, "I...agree to immediately cease and desist...accepting SNAP benefits. I acknowledge that AJ Mini Market is not authorized to accept SNAP benefits, and that, in doing so, the firm is in violation of Program statute and regulations.... In the event I continue to accept SNAP benefits after receipt of this letter, I understand that FNS will pursue appropriate administrative and/or criminal action."

The record shows that the Appellant did not reply to the cease and desist letter.

On July 14, 2022, the Retailer Operation Division sent the firm another letter, this time officially charging it with violating Program rules through the unauthorized acceptance of SNAP benefits as described in the April 15 letter. The charge letter stated that the firm had continued to accept SNAP benefits after receiving the cease and desist warning and indicated that it had 10 days to respond to the charges.

The record shows that the Appellant did not reply to the charge letter either.

After further considering the evidence in the case, the Retailer Operations Division concluded that the firm had illegally accepted EBT benefits during a time in which it was not authorized to do so, and issued a determination letter to this effect dated August 2, 2022. This letter informed the Appellant that it would be assessed a fine of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in accordance with regulations at 7 CFR § 278.6(m). The letter stated that the fine must be paid in full within 30 calendar days.

In an e-mail dated August 8, 2022, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted and implementation of the fine has been held in abeyance pending the outcome of this review.

STANDARD OF REVIEW

In an appeal of adverse action, such as the imposition of a fine or other fiscal penalty, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(m) establishes the authority upon which a monetary fine may be imposed against any unauthorized third party that illegally accepts SNAP benefits.

7 U.S.C. § 2021(f) states:

(f) The Secretary may impose a fine against any person not approved by the Secretary to accept and redeem food coupons who violates any provision of this Act or a regulation issued under this Act, including violations concerning the acceptance of food coupons. The amount of any such fine shall be established by the Secretary and may be assessed and collected in accordance with regulations issued under this Act separately or in combination with any fiscal claim established by the Secretary. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.

7 CFR § 278.2(a) reads, in part:

[SNAP benefits] may be accepted by **an authorized retail food store** only from eligible households or the households' authorized representative, and only in exchange for eligible food....
[Emphasis added.]

7 CFR § 278.6(m) reads:

Fines for unauthorized third parties that accept SNAP benefits.
FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food and Nutrition Act of 2008 or the program regulations, including violations involving the acceptance of coupons. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

ANALYSIS AND FINDINGS

A review of the evidence does not support the Retailer Operations Division's determination in this case. Accordingly, it is unnecessary to list or address the Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by the Appellant and the Retailer Operation Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

Based on a review of all available information in this case, the decision by the Retailer Operations Division to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) fine against AJ Mini Market is reversed. Therefore, the fine is dismissed.

RELEASE OF INFORMATION

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON
Administrative Review Officer

August 25, 2022