

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

La Peraviana Inc.,

Appellant,

v.

Case Number: C0251030

**Office of Retailer Operations and
Compliance,**

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to assess a fine against La Peraviana Inc. (hereinafter “Appellant” or “La Peraviana Inc.”) in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** for unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits. Therefore, the determination is reversed and the fine is cancelled.

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with 7 CFR § 278.6(m) in its administration of the SNAP, when it assessed a fine in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** for unauthorized acceptance of SNAP benefits.

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

The Office of Retailer Operations and Compliance determined that the Appellant firm accepted SNAP benefits in exchange for ineligible merchandise and imposed a six month disqualification against the Appellant by letter dated June 28, 2020. The Appellant appealed this determination and requested an administrative review. The resulting Final Agency Decision dated October 20,

2021 upheld the six month disqualification stating that it would become 30 days following receipt of the Decision. The Decision was received by store ownership on October 25, 2021. The Office of Retailer Operations and Compliance did not close the case until November 24, 2021 and the store's point of sale (POS) terminal was not turned off until November 30, 2021.

In a letter dated January 13, 2022, the Office of Retailer Operations and Compliance charged the Appellant firm for the unauthorized acceptance of SNAP benefits during the period November 25, 2021 through November 29, 2021. This letter cited the Final Agency Decision received on October 25, 2021. No warning letter was issued prior to the charge letter.

In a response to the Office of Retailer Operations and Compliance of January 21, 2022, the Appellant replied to the letter of charges. The record reflects that the Office of Retailer Operations and Compliance received and considered the information provided prior to making a determination.

After considering the Appellant's response and the evidence in the case, the Office of Retailer Operations and Compliance issued a determination letter dated February 28, 2022, informing the Appellant that violations had occurred at the store and that a fine in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was warranted for unauthorized acceptance of SNAP benefits in accordance with Section 278.6(m) of the SNAP regulations. The determination letter included a Bill for Collection (Form 1114) in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In a letter postmarked March 14, 2022, the Appellant requested an administrative review of the Office of Retailer Operations and Compliance's decision to impose a fine. FNS granted the Appellant's request for administrative review by letter dated March 24, 2022 and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Section 278.6(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization.

Section 278.6(m) of the SNAP regulations states:

Fines for unauthorized third parties that accept food stamps. 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, as amended, 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).

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant requests reconsideration of the imposed fine.
- The owner was confused as to when the firm had to stop accepting SNAP benefits and thought the EBT POS device could be used until it was turned off.
- The owner thought the EBT POS device would automatically stop working and that would be the start of the six month SNAP disqualification.
- The Appellant did not intentionally violate the SNAP rules.
- The Appellant requests leniency and that the imposed fine be reduced.
- The imposed fine would impose a financial hardship on the Appellant as SNAP sales have dropped over 40 percent since the start of the six month SNAP disqualification.

In support of these contentions, the Appellant submitted a letter dated March 9, 2022 in which the store owner gave permission/authorization to his daughter to respond to the imposed charges on his behalf.

ANALYSIS AND FINDINGS

A review of the evidence does not support the Office of Retailer Operations and Compliance's determination in this case. Accordingly, it is unnecessary to 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 Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

CONCLUSION

After a review of the pertinent documentation, and based on the applicable regulations and other guidance, the decision by the Office of Retailer Operations and Compliance to impose a fine in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for unauthorized acceptance of SNAP benefits is reversed and the fine is cancelled. The Office of Retailer Operations and Compliance should continue processing the Appellant firm's SNAP application.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

August 2, 2022