

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

**La Victoria Produce #1,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0251364**

**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 La Victoria Produce #1 for the unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) 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 La Victoria Produce #1.

**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 SUMMARY**

In a letter dated January 20, 2021, the Retailer Operations Division charged La Victoria Produce #1 with committing program violations; specifically, allowing an exchange of SNAP benefits for ineligible nonfood items on three separate occasions. The charges stemmed from an undercover investigation that took place at the store between December 7, 2020 and December 12, 2020.

After considering the firm's response to the charges, the Retailer Operations Division sent the owner a letter dated May 11, 2021, informing her that the store would be disqualified from SNAP for a period of six months.

The disqualification letter included the following warning: “If you accept SNAP benefits after the effective date of disqualification, you will be subject to a monetary fine per Section 278.6(m) of the SNAP regulations and possible prosecution under applicable laws.”

On May 24, 2021, the store owner appealed the disqualification by requesting an administrative review. Implementation of the disqualification was held in abeyance pending the outcome of the review.

On September 29, 2021, the assigned administrative review officer sustained the six-month disqualification and noted that the disqualification would take effect 30 days from the date the store received the Final Agency Decision. The record shows that the Final Agency Decision was delivered to the store on October 1, 2021.

The agency’s record indicates that on November 2, 2021 – 32 days after the store received the Final Agency Decision – Retailer Operations Division personnel implemented the disqualification action in the agency’s computer system. However, the record shows that the firm continued to redeem SNAP benefits at the store until November 8, 2021.

In a letter dated January 14, 2022, the Retailer Operations Division charged the Appellant with accepting SNAP benefits during a period of time in which the firm was not authorized; specifically, November 3, 2021 through November 8, 2021. The charge letter further stated that in accordance with regulations, the monetary fine would be “\$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted SNAP benefits.”

The record shows that the Appellant did not reply to the January 14 charge letter.

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 March 4, 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 a letter postmarked March 11, 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. Among the key contentions made by the Appellant in its request for review is a claim that it assumed that the EBT point-of-sale machine would stop automatically when the disqualification took effect.

## **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 address 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 La Victoria Produce #1 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 16, 2022