

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

MLM Mini Mart, LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0251319

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to assess a fine against MLM Mini Mart, LLC (Appellant) in the amount of \$22,007.89 for unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits.

ISSUE

The purpose of this review is to determine whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(m), when it assessed a fine in the amount of \$22,007.89 for unauthorized acceptance of SNAP benefits against Appellant on February 15, 2022.

AUTHORITY

7 USC § 2023 and the 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 notified Appellant in a letter dated November 5, 2021, that the firm was being disqualified for a period of six months for violating the terms and conditions of the SNAP regulations at 7 CFR § 278.6(m). The letter stated that the disqualification will become effective on the 10th calendar day following the receipt of this letter, which was delivered on November 8, 2021.

USDA is an equal opportunity provider, employer and lender.

On January 11, 2022, the Office of Retailer Operations and Compliance sent Appellant another letter stating that the firm continued to accept SNAP benefits from November 19, 2021, through December 1, 2021. According to the letter, such unauthorized acceptance of SNAP is a violation of the Food and Nutrition Act of 2008, as amended, and SNAP regulations. The letter further stated that regulations at 7 CFR § 278.6(m) gave FNS the authority to impose a fine against any firm that illegally accepted SNAP benefits.

On January 21, 2022, Appellant, through counsel, replied to the January 11, 2022, charge letter. Counsel explained that Appellant thought the six-month disqualification would begin when the machine was turned off and that was the sum total of the punishment. After reviewing the evidence and Appellant's reply, the Office of Retailer Operations and Compliance concluded that the firm had accepted EBT benefits during a time in which it was not authorized to do so and issued a determination letter dated February 15, 2022. This letter informed Appellant that it would be assessed a fine of \$22,007.89 in accordance with regulations at 7 CFR § 278.6(m).

By letter dated February 24, 2022, Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was granted and implementation of the disqualification 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 law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization.

7 CFR § 278.6(m) reads, in part:

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).

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 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 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

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to assess a fine against MLM Mini Mart LCC of \$22,007.89 for unauthorized acceptance SNAP benefits is reversed.

RIGHTS AND REMEDIES

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.

MARY KATE KARAGIORGOS
Administrative Review Officer

August 3, 2022