

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

N & W Convenience Mart Inc,

Appellant,

v.

Case Number: C0251160

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support the determination by the Retailer Operations Division to assess a fine against N & W Convenience Mart Inc (hereinafter “Appellant” or “N & W Convenience Mart 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.

ISSUE

The issue accepted for review is whether the Retailer Operations Division 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

USDA conducted an investigation of the compliance of the Appellant with federal SNAP law and regulations during the period October 16, 2021 through October 18, 2021. The investigation reported that personnel at the Appellant accepted SNAP benefits despite the Appellant not being an authorized SNAP retailer. As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a later dated January 3, 2022, that the firm was charged with violating the terms and conditions of the SNAP regulations, 7 CFR § 278.6(m). The letter states, in part, that the violations “. . . warrant assessment of a fine in the amount of **5 U.S.C. § 552 (b)(6) &**

(b)(7)(C) for the unauthorized acceptance of SNAP benefits as provided in Section 278.6(m) of the SNAP regulations.”

In responses to the Retailer Operations Division of January 4, 2022 and January 11, 2022, the Appellant replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant’s responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 20, 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 a letter postmarked January 28, 2022, the Appellant requested an administrative review of the Retailer Operations Division’s decision to impose a fine. FNS granted the Appellant’s request for administrative review by letter dated February 3, 2022.

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

- The owner did not open the October 13, 2021 permanent SNAP disqualification determination letter, delivered to the Appellant via UPS on October 15, 2021, until Monday, October 17, 2021.
- The owner was not working at the store that weekend and left early on Friday.
- The owner apologizes for not reading his mail.
- Upon review of the letter, the owner telephoned Retailer Operations Division staff to ask what he should do and the owner was instructed not to accept any further SNAP benefits.
- The owner immediately ceased accepting SNAP benefits.
- The owner sold the store in August 2021.
- There was an agreement in place for the store purchase but the purchase was not closed as of January 4, 2022 because of liquor license issues; however, the owner had received a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) deposit on the sale.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is still the owner of the Appellant as of January 4, 2022.

ANALYSIS AND FINDINGS

The Appellant contends that the transactions were made in error as the owner did not open the determination letter until the Monday (i.e., October 18, 2021) after receipt of the letter. The owner did not work at the store the weekend prior to this date. However, when ownership signed the FNS application to become a SNAP authorized retailer, this included a certification and confirmation that the Appellant would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." Regardless of whom the ownership of a store may use to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

The Appellant apologizes and requests reconsideration of the imposed fine. However, the record reflects that USDA investigated N & W Convenience Mart Inc and found evidence that the firm accepted SNAP benefits without a SNAP authorization. Once a firm receives a letter informing them of a sanction, FNS must manually update its computer system to prevent the processing of further SNAP transactions by that retailer. For a firm that is permanently disqualified, the effective date of the sanction is the date the permanent disqualification letter is received. For a firm who has received a lesser penalty, FNS treats the effective date of the sanction as the date the retailer's computerized records are updated. On Friday, October 15, 2021, a permanent disqualification letter was received by the Appellant (per UPS confirmation of delivery, the letter was signed for by "5 U.S.C. § 552 (b)(6) & (b)(7)(C)"). This letter stated that the Appellant should immediately cease accepting SNAP benefits or be subject to unauthorized acceptance penalties. The Appellant continued to accept SNAP benefits from October 16, 2021 through October 18, 2021. Therefore, based on the assessed information and using the formula in 7 CFR § 278.6(m), the Retailer

Operations Division appropriately assessed a fine in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for accepting SNAP benefits without SNAP authorization.

Please note that 7 CFR § 278.6(m) also states that “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.”

CONCLUSION

Based on a review of the evidence in this case, the determination by the Retailer Operations Division to assess a fine against N & W Convenience Mart Inc of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for unauthorized acceptance of SNAP benefits is sustained.

In accordance with the Food and Nutrition Act of 2008, as amended, and the regulations there under, this penalty shall become effective thirty (30) days after receipt of this letter. The Appellant may contact the FNS Financial Management Accounting Division at 1-703-605-0483 to discuss payment options or follow the instructions in the Retailer Operations Division's letter dated January 20, 2022 regarding online or check payment options.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

April 7, 2022