

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

Unimart,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0254485

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 SAA Beauty Supply (“Appellant”) in the amount of \$59,161.22 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 \$59,161.22 for unauthorized acceptance of SNAP benefits against Appellant on June 1, 2022.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 informed Appellant, in a letter dated November 6, 2013, 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 \$59,161.22 for the unauthorized acceptance SNAP benefits as provided in Section 278.6(m) of the SNAP regulations.” Although afforded the opportunity to do so, Appellant did not respond to the charges.

The Office of Retailer Operations and Compliance informed Appellant, by letter dated June 1, 2022, that it determined that violations had occurred at the store and that a fine in the amount of \$59,161.22 was warranted.

On June 7, 2022, Appellant appealed the Office of Retailer Operations and Compliance's decision to impose a fine and requested an administrative review of the action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

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.

Nothing in this decision prevents the Office of Retailer Operations and Compliance from requesting additional information regarding Appellant's eligibility for authorization. Should Appellant be subject to a subsequent sanction, Appellant will be notified of its appeal rights at that time.

CONCLUSION

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to assess a fine against Unimart of \$59,161.22 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.

RICH PROULX
ADMINISTRATIVE REVIEW OFFICER

July 25, 2022