

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

**Vanessa Foods Corp.,**

**Appellant,**

**v.**

**Case Number: C0251025**

**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 insufficient evidence to support the determination by the Retailer Operations Division to assess a fine against Vanessa Foods Corp. (hereinafter “Appellant” or “Vanessa Foods Corp.”) 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 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**

The Retailer Operations Division 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 July 22, 2021. The Appellant appealed this determination and requested an administrative review. The resulting Final Agency Decision dated October 8, 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 8, 2021. The Retailer Operations Division did not close the case until November 8, 2021 and the store's point of sale (POS) terminal was not turned off until November 16, 2021.

In a letter dated January 12, 2022, the Retailer Operations Division charged the Appellant firm for the unauthorized acceptance of SNAP benefits during the period November 9, 2021 through November 15, 2021. This letter cited the determination letter received on July 23, 2021 and the Final Agency Decision received on October 8, 2021. No warning letter was issued prior to the charge letter.

The record reflects that on January 24, 2022, the Appellant's counsel requested an extension in time for providing a response to the letter of charges. Via letter of January 24, 2022, the Retailer Operations Division granted counsel's time extension request to February 23, 2022.

In responses to the Retailer Operations Division of January 24, 2022 and February 22, 2022, the Appellant, through counsel, 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 April 15, 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 April 21, 2022, the Appellant, through counsel, 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 May 16, 2022 and implementation of the sanction has been held in abeyance pending completion of this review. In an email correspondence of May 27, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative 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 replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The store owner and his wife have been dealing with many health issues and the owner was unable to be physically present and run the store during the investigation period.
- When healthy, the owner and his wife were able to run the store without incidents.
- As a result, according to the determination by FNS, the sale of ineligible items occurred at the store during their period of illness.
- The Appellant responded to the charge letter but the response was rejected and the firm was subsequently assessed a six month SNAP disqualification.
- Unfortunately, the determination letter was never reviewed by the owner due to illness and the six month disqualification was sustained.
- The Appellant filed a timely request for administrative review of the disqualification period and the agency sustained the six month disqualification in its final decision dated October 8, 2021.
- According to the determination letter, the six month SNAP disqualification shall become effective 30 days after delivery of the decision. That information states the commencement of the disqualification period so as to inform the Appellant that it needed to prepare the store for the inability to accept SNAP benefits. It does not denote a date

upon which the disqualification would be effective and its implications are that the store equipment for processing SNAP transactions would be disconnected as of the effective date. There is no advisement in the letter that the Appellant should track the 30 days, nor that the Appellant had any obligations other than being aware that the system would be shut down.

- Retailers are not instructed to unilaterally take any action when a six month disqualification period is imposed. When the retailer's terminal stops functioning, that is the retailer's official notice that a six month disqualification has commenced. It is normal procedure for the agency to terminate the ability of the disqualified store from accepting SNAP benefits. If the onus were on the retailer to disconnect the terminal, such should be clearly communicated in the Final Agency Decision or the service provider should be notified. Yet, the disqualification procedure entails that the agency, not the retailer, shut off the terminal approximately 30 days from the Final Agency Decision.
- In this instance, FNS failed to shut off the system, which it had full capacity to do, and is now asserting a penalty against the Appellant for non-compliance with a date uncertain when the Appellant had no knowledge of the process nor notice of the date upon which the disqualification and the disconnection of its equipment would occur.
- In fact, it was FNS who shut down the equipment, as originally expected by the Appellant. There was no follow up notification by the agency of a date certain for the discontinuous nor any instructions as to what the Appellant was required to do if anything.
- There was no affirmative date for termination set forth in the correspondence, no reminder letters, and no follow-up by the agency to confirm compliance with the commencement of the disqualification period.
- There was no intent by the Appellant to violate the sanction nor any knowledge that the store had violated the determination since the expectation was that the agency would do whatever necessary in conformity with the penalty, including disconnecting the system on the proper date.
- Counsel has represented many SNAP retailers and, upon failing to prevail in those matters, FNS has always disconnected the store's terminal, thereby enforcing the disqualification.
- It is assumed that FNS failed to properly program its equipment and is now looking to the Appellant for compensation based upon the agency's oversight.
- USDA's actions are subject to the "arbitrary and capricious" standard. See Standard of Review from *Organized Village of Kake v. USDA*.
- The six month SNAP disqualification has imposed a financial hardship on the Appellant.
- As a resolution in this matter, the Appellant requests that any proposed penalties be waived/rescinded, and proposes that the six month disqualification period be extended for 6 days in which the agency left the store's equipment running so that the six month disqualification period would actually be six months.

In support of these contentions, the Appellant submitted a notarized affidavit of the store owner.

## **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 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 Retailer Operations Division. 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 Retailer Operations Division 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.

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