

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

El Mercadito De Brentwood,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0254751

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support the determination by the Retailer Operations Division assess a fine against El Mercadito De Brentwood in the amount of \$24,417.07 for the 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 Title 7 Code of Federal Regulations (CFR) Part 278.6(m), when it assessed a fine in the amount of \$24,417.07 for the unauthorized acceptance of SNAP benefits against El Mercadito De Brentwood on July 21, 2022.

AUTHORITY

7 U.S.C. § 2023 and 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

On June 28, 2021, the Retailer Operations Division issued a determination letter against El Mercadito De Brentwood for the acceptance of SNAP benefits in exchange for ineligible merchandise and imposed a six-month disqualification. Appellant appealed this determination by requesting an administrative review of the decision. In a Final Agency Decision (FAD) dated March 3, 2022, the administrative review upheld the Retailer Operations Division’s determination. The FAD provided that the six-month disqualification would become effective 30 days after Appellant received the decision. Appellant received the decision on March 3, 2022.

However, the Retailer Operations Division did not close the case until April 13, 2022, and the store's point-of-sale (POS) terminal was not turned off until April 18, 2022.

In a letter dated July 5, 2022, the Retailer Operations Division charged the Appellant with the unauthorized acceptance of SNAP benefits during the period of April 3, 2022, through April 18, 2022. According to the letter, such unauthorized acceptance of SNAP benefits 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) and 7 CFR § 284, give FNS the authority to impose a fine against any firm that illegally accepted SNAP benefits. Appellant did not respond to the charge letter.

After considering Appellant's response and the evidence in the case, the Retailer Operations Division notified Appellant, in a letter dated July 21, 2022, that it found that the unauthorized acceptance of SNAP benefits had occurred at the firm, and that a fine in the amount of \$24,417.07 was warranted in accordance with Section 278.6(m) of the SNAP regulations. This determination letter included a Bill for Collection (Form 1114) requesting payment in the amount of \$24,417.07. On August 2, 2022, Appellant appealed the Retailer Operations Division's decision and requested an administrative review of this action. The appeal was granted and assessment of the fine has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and is promulgated through regulation under Title 7 CFR Part 278. Specifically, 7 CFR § 278.6(m) establishes the authority upon which a monetary fine may be assessed against a store that accepts SNAP benefits without authorization.

7 CFR § 278.6(m) states, 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 or the program regulations, including violations involving the acceptance of [SNAP benefits]. The fine shall be \$1,000 for each violation *plus* an amount equal to three times the face value of the illegally accepted [SNAP benefits]. 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).

7 CFR § 284.1(e) states, in part:

FNS shall:

(3) Disqualify the firm for 5 years, as described at § 278.6(e)(2)(v) of this chapter, or for 3 years, as described at § 278.6(e)(3)(iv) of this chapter, for unauthorized acceptance violations involving P-EBT benefits, and impose fines, as described at § 278.6(m) of this chapter, for unauthorized acceptance violations involving P-EBT benefits.

ANALYSIS AND FINDINGS

The evidence in the Retailer Operations Division's case file does not support its determination to assess a fine against Appellant for the unauthorized acceptance of SNAP benefits. 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 Retailer Operations Division. 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 Retailer Operations Division to assess a fine of \$24,417.07 against El Mercadito De Brentwood for the unauthorized acceptance of SNAP benefits is reversed.

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.

MICHELLE WATERS
Administrative Review Officer

November 29, 2022