

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

Subs Food,

Appellant,

v.

Case Number: C0254805

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 Subs Food (hereinafter “Appellant” or “Subs Food”) in the amount of \$6,219.00 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 \$6,219.00 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 April 15, 2022. The Appellant did not appeal this decision and did not request an administrative review. The April 15, 2022 letter upheld the six month disqualification and stated that it would become 30 days following receipt of the decision. The decision was received by store ownership on April 18, 2022. The Retailer Operations Division did not close

the case until April 28, 2022 and the store's point of sale (POS) terminal was not turned off until May 4, 2022.

In a letter dated June 10, 2022, the Retailer Operations Division charged the Appellant firm for the unauthorized acceptance of SNAP benefits during the period April 29, 2022 through May 3, 2022 in accordance with Section 278.6(m) of the SNAP regulations. This letter cited the determination letter received on April 18, 2022. No warning letter was issued prior to the charge letter.

The record reflects that the Appellant did not provide the Retailer Operation Division with a response to the letter of charges.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated July 22, 2022, informing the Appellant that violations had occurred at the store and that a fine in the amount of \$6,219.00 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 \$6,219.00.

In an email correspondence of July 28, 2022, the Appellant requested an administrative review of the Retailer Operations Division's decision to impose a fine. In an email correspondence of August 1, 2022, the Appellant submitted additional information in support of the request for administrative review. FNS granted the Appellant's request for administrative review by letter dated August 8, 2022 and implementation of the sanction 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 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 administrative review request and in subsequent correspondence, the Appellant stated the following summarized contentions, in relevant part:

- The owner apologizes. He did not intentionally mean to break the SNAP rules.
- The owner was on a trip and was not at the store during the period April 29, 2022 – May 3, 2022 and no one paid attention that the firm was not supposed to accept SNAP benefits during that time period.
- The owner believed that FNS would turn the store's EBT device off and that the store has no control over when it is turned off.
- The amount of the fine is excessive and the owner cannot afford to pay it.

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 \$6,219.00 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

November 29, 2022