

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

**United Grocery Fresh Food Inc.,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0255258**

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**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 Retailer Operations Division to assess a fine against United Grocery Fresh Food Inc. (Appellant) in the amount of \$17,147.40 for unauthorized acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits.

**ISSUE**

The purpose of this review is to determine whether the Retailer Operations Division 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 \$22,007.89 for unauthorized acceptance of SNAP benefits against Appellant on February 15, 2022.

**AUTHORITY**

7 USC § 2023 and the 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 notified Appellant in a letter dated January 4, 2022, that the firm was being disqualified for a period of six months for violating the terms and conditions of the SNAP regulations at 7 CFR § 278.6(m). The letter stated that the disqualification will become effective on the 10th calendar day following the receipt of this letter, which was delivered on January 5, 2022.

USDA is an equal opportunity provider, employer and lender.

On January 12, 2022, Appellant requested an administrative review of the six-month disqualification determination. The disqualification was held in abeyance while the administrative review was conducted. After the administrative review was completed, the Final Agency Decision was issued on February 28, 2022. The Final Agency Decision upheld the six-month disqualification determination and stated that the period of disqualification would begin within 30 days from receipt of the decision. The FAD was delivered to the firm by UPS on March 14, 2022, and the store's representative by e-mail on March 9, 2022. However, the Retailer Operations Division did not close the case until April 11, 2022, and the point-of-sale (POS) terminal was not turned off until April 19, 2022.

On June 28, 2022, the Retailer Operations Division sent Appellant another letter stating that the firm continued to accept SNAP benefits from April 10, 2022, through April 18, 2022. According to the letter, such unauthorized acceptance of SNAP 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) gave FNS the authority to impose a fine against any firm that illegally accepted SNAP benefits. The retailer did not reply to the January 11, 2022, letter of charges. After reviewing the evidence, the Retailer Operations Division concluded that the firm had accepted EBT benefits during a time in which it was not authorized to do so and issued a determination letter dated July 29, 2022. This letter informed Appellant that it would be assessed a fine of \$17,147.40 in accordance with regulations at 7 CFR § 278.6(m).

By letter dated August 1, 2022, Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was granted and implementation of the disqualification 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 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 Retailer Operations Division'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 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 against MLM Mini Mart LCC of \$17,147.40 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

March 15, 2023