

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

3 Star Deli Grocery Inc,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0244274

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), that there is insufficient evidence to support the assessment of a fine against 3 Star Deli Grocery Inc. (Appellant) for the unauthorized acceptance of SNAP benefits. The fine is reversed.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action in its administration of the SNAP, consistent with 7 U.S.C. § 2021, 7 CFR § 278.2(a), 7 CFR § 278.6(m), and 7 CFR § 278.7(a), when it imposed an unauthorized acceptance fine against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

Appellant was permanently disqualified from participation as a SNAP authorized retail food store. The notice of this permanent disqualification was sent to and delivered solely to counsel, on January 22, 2021. By letter dated March 5, 2021, Retailer Operations charged the owner with accepting SNAP benefits in exchange for merchandise at an unauthorized store. This Charge letter, and the subsequent Determination letter dated April 1, 2021, were sent only to the owner

of Appellant. By letter dated April 7, 2021, counsel requested review of the determination. The review was granted by letter dated April 23, 2021.

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. That means the Appellant has the burden of providing relevant, credible 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 not true.

CONTROLLING LAW AND REGULATIONS

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 FNS may impose a fine against a legal entity not approved by FNS to accept and redeem SNAP benefits.

7 CFR § 278.2(a) states: “SNAP benefits may be accepted by an authorized retail food store only from eligible households or the households’ authorized representative, and only in exchange for eligible food.”

7 CFR § 278.6(m) states in part: “FNS may impose a fine against any individual...or other legal entity not approved by FNS to accept and redeem SNAP benefits for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of 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 Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.”

7 CFR § 278.7(a) states in part: “FNS may establish and pursue claims against firms...which have accepted or redeemed SNAP benefits in violation of the Act or this part, regardless of whether the firms or entities are authorized to accept SNAP benefits.”

SUMMARY OF THE CHARGES

The unauthorized acceptance of SNAP is a direct violation of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278.2(a) of Title 7 of the CFR. Section 278.6(m) establishes the authority upon which a fine may be assessed against a firm that accepts SNAP benefits without authorization. FNS may impose a fine against any individual or other legal entity not approved by FNS to accept and redeem SNAP benefits. FNS detected unauthorized acceptance of benefits at Appellant from January 23 through January 26, 2021. Retailer Operations charged the owner with accepting SNAP benefits at an unauthorized store.

APPELLANT'S CONTENTIONS

Consideration was made of all contentions as presented, whether recapitulated here or not.

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not received a letter letting him know that USDA have make a decision to close out his Food Stamp, and because of that he was continuing to accept food stamp.
- 3 Star Deli Grocery Inc was open for a certain amount of hours daily because some of the workers had contracted the Carona [sic] Virus and had to quarantine.
- We are making a plea of hardship, and for consideration for no fine, for if he did received that consideration letter he will not make that mistake to continue to accept Food Stamp in his Business.

ANALYSIS AND FINDINGS

This review is to either validate or to invalidate the determination made by Retailer Operations, and it is limited to the facts at the basis of Retailer Operations' determination at the time it was made. The documentation under review supports that the Determination letter to permanently disqualify Appellant from the SNAP was sent and delivered only to counsel. This is the letter that noticed: "If you accept SNAP benefits after the effective date of disqualification, you will be subject to a monetary fine per Section 278.6(m) of the SNAP regulations and possible prosecution under applicable laws."

The regulations at 7 CFR § 278.6(o) states that delivery that provides evidence of delivery constitutes notice to the addressee of its contents. As such, the record supports that only counsel was noticed that the acceptance of benefits after the effective date of disqualification could lead to a fine. Upon review, the evidence more supports that the owner of Appellant did not receive the Determination letter on January 22, 2021. It is deemed likely that counsel did not notify his client regarding the effective date of his disqualification until around January 26, 2021.

CONCLUSION

The preponderance of the evidence in the record supports that the owner did not receive timely notice regarding the warning relative to accepting unauthorized SNAP redemptions. The Determination letter with said warning was not delivered directly to the owner. Therefore, the fine 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

June 3, 2021