

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

**T C Store,**

**Appellant,**

**v.**

**Case Number: C0208226**

**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 sufficient evidence to support the determination by the Retailer Operations Division to assess a fine against T C Store (hereinafter “Appellant” or “T C Store”) in the amount of \$70,565.51 for 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 7 CFR § 278.6(m) in its administration of the SNAP, when it assessed a fine in the amount of \$70,565.51 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**

In a letter dated April 26, 2018, the Retailer Operations Division informed the Appellant that USDA had investigated T C Store and found evidence that the firm had accepted SNAP benefits despite not being an authorized SNAP retailer. The Appellant was charged with terms and conditions of the SNAP regulations, 7 CFR § 278.6(m). The letter states, in part, that the violations “. . . warrant assessment of a fine in the amount of \$70,565.51 for the unauthorized acceptance of SNAP benefits as provided in Section 278.6(m) of the SNAP regulations.”

In a response to the Retailer Operations Division dated May 11, 2018, the Appellant responded to the charges therein indicating that the acceptance of SNAP benefits was done so without its knowledge and was unintentional. Upon receiving the Charge Letter, the Appellant ceased accepting SNAP benefits and removed the old EBT point-of-sale machine. The new machines obtained for T C Store do not accept SNAP benefits.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 30, 2018, informing the Appellant that violations had occurred at the store and that a fine in the amount of \$70,565.51 was warranted for unauthorized acceptance of SNAP benefits.

In a letter postmarked June 11, 2018, the Appellant 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 October 2, 2018.

### **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 reply to the Charge Letter and in the administrative review request postmarked June 11, 2018, the Appellant stated the following summarized contentions, in relevant part:

- The acceptance of SNAP benefits was done so without the Appellant's knowledge and was unintentional.
- Upon receiving the Charge Letter, the Appellant ceased accepting SNAP benefits.
- The Appellant processes credit and debit card transactions through 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and it signed up with an account through 5 U.S.C. § 552 (b)(6) & (b)(7)(C) via phone.
- The Appellant was informed that it could start taking SNAP benefits two to three days later.
- The Appellant never received a letter from USDA informing it to stop using the terminal because it was in violation with regard to the previous owner.
- The new machines do not accept SNAP benefits.
- The Appellant apologizes for its mistakes as they were unintentional.
- T C Store is a small store and a fine of the determined amount will irreparably harm the business.

## ANALYSIS AND FINDINGS

With regard to the Appellant's contentions, the record reflects that USDA investigated T C Store and found evidence that the firm accepted SNAP benefits without a SNAP authorization. FNS documentation indicates that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Officer of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), has been doing business as T C Grocery located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) since November 1, 2017. The building of T C Grocery is located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and is also located on a corner with entrances on two different named streets. The other address to this building is 5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS records indicate that there are no firms currently authorized to participate in the SNAP at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, records obtained by FNS indicate that SNAP benefits were being accepted at the location doing business as T C Store.

On January 11, 2018, an official warning letter was issued to the Appellant from FNS to cease and desist from accepting SNAP benefits. The letter was delivered to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on January 17, 2018 and signed for by 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, even after receipt of the warning letter from FNS, the firm continued to accept unauthorized SNAP benefits.

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. Specifically, FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem 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 Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.

Sixty-five (65) violations during the period of January 18, 2018 through April 24, 2018, were identified by the Retailer Operations Division [each daily settlement of SNAP benefits is considered a violation].

1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
2. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
4. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

With regard to the Appellant's argument that a fine of the determined amount will irreparably harm the business, such contentions cannot constitute grounds for reversing the imposed fine in the present case. There are no provisions in the Food and Nutrition Act, SNAP regulations or agency policy allowing hardship to retail store owners, SNAP customers, etc. as considerations in cases where SNAP benefits are accepted at a firm that is not authorized to participate in the SNAP.

Therefore, based on the information assessed by the Retailer Operations Division, it is determined that in accordance with SNAP regulations specified in 7 CFR § 278.6(m), the firm is assessed a fine in the amount of \$70,565.51 for accepting SNAP benefits without SNAP authorization.

### **CONCLUSION**

Based on a review of the evidence in this case, the determination by the Retailer Operations Division to assess a fine against T C Store of \$70,565.51 for unauthorized acceptance of SNAP benefits is sustained.

In accordance with the Food and Nutrition Act, and the regulations thereunder, this penalty shall become effective thirty (30) days after receipt of this letter. To pay the fine, Appellant should refer to the information provided in the Determination Letter dated May 30, 2018.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial

review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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 28, 2018