

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

**Clairton Mini Mart,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0245405**

**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 Office of Retailer Operations and Compliance (“ROC”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Clairton Mini Mart (“Appellant”). The determination is modified to a one-year disqualification for accepting SNAP benefits in payment for items sold on credit.

**ISSUE**

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on January 14, 2022.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 July 9, 2021, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC's charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant's contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated January 14, 2022. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On January 14, 2022, Appellant appealed the ROC's determination and requested an administrative review of this action. The appeal was granted.

### STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant 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 untrue.

### 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(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm engaged in trafficking of SNAP benefits.

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system** . . . . (Emphasis added.)

7 CFR § 278.6(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification . . . . The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . .

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, in part, as:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . . .”

Also at 7 CFR § 271.2, eligible food is defined as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption . . .

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence ... that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

Section 278.6(e)(4) of the SNAP regulations states, in part, when a firm is to be disqualified for one year:

The firm has accepted SNAP benefits in payment for items sold to a household on credit.

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from September 2020 through February 2021. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- Multiple transactions made from the same accounts in unusually short time frames; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- The store is 2,500 square feet and sells a variety and quantity of staple food items.
- Appellant is located in an area with many SNAP participants.
- Appellant does not have nearby competitors.
- Appellant's inventory is superior to that of nearby stores.
- Most households redeem nearly all their benefits within the first two weeks of the month.
- Large transactions are because SNAP participants are buying meats, sweetened beverages, vegetables, frozen prepared foods, prepared desserts, dairy products, breads, and other items sold by Appellant.
- SNAP participants are more likely to shop at convenience stores and convenience stores, and customers of these stores are among the most loyal customers.
- Convenience stores and similar stores had a 3% increase in customers over 2015.
- Appellant carries more expensive items than were listed in the store visit report including beef jerky for \$30, chicken for \$39.99, and shrimp scampi for \$25.
- The ALERT system has not been independently proven accurate in finding fraud. Data analysis is prone to error without accurate context. The analyst overly relied on the results of the ALERT system when issuing a charge of trafficking because of confirmation bias. The analyst made incorrect assumptions about customer shopping patterns and circumstances and failed to take into account local differences.

- USDA bears the burden of proof in administrative review, not Appellant.
- Appellant quoted studies that stated that superstores and supercenters accounted for 90% of redemptions, but in eight neighborhoods, convenience stores accounted for 46% of SNAP redemptions.
- Households with particular demographic information are more likely to be disqualified which shows a bias towards smaller grocers.
- Appellant has three registers and two EBT terminals.
- Because of the pandemic, sales increased.
- USDA does not know the correlation coefficient between ALERT scans and trafficking. Appellant has calculated this based on results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak.
- Appellant denies the allegations.
- Recent administrative review cases discuss the precedent that should be considered in this case: *Howard's Quik Mart vs. Retailer Operations Division* and *Gloesis Group vs. Retailer Operations Division*. Appellant also included an excerpt from *Cardenes Market vs. Retailer Operations and Compliance* and stated this is standard form language in Administrative Review determinations to overturn disqualifications issued by ROC.
- Multiple transactions occurring over the span of hours are not inherently suspicious according to *Onukwugha v. U.S.*
- Past Administrative Review Branch decisions have identified a number of certain explanations which adequately explain the presence of unusual transactions patterns in the charge letter.
- If allegations were raised in cases that were reversed, Appellant can conclude those were the reasons accepted by USDA for the reversal, even though USDA did not cite those reasons for the reversal.
- Back-to-back transaction are because the store is located near a large African American community.
- Back-to-back transactions are because households participate in co-shopping where different household members split benefits evenly or proportionately and separately shop at Appellant during a short period of time.
- SNAP participants shop at Appellant because it is more convenient and smaller.
- SNAP participants make purchases for friends.
- There are no logistic barriers to the transactions included in the charge letter.
- There are six stores located within a mile of Appellant. The nearest is .32 miles away.
- SNAP customers shop at Appellant because they lack consistent transportation.
- SNAP customers make back-to-back purchases at Appellant because they are unemployed and bored.
- Deprivation of FOIA is a violation of the regulations.
- Other stores are located closer together creating more competition and less SNAP activity.
- Back-to-back purchases are because participants are making purchases, returning home, and then returning to the store to make a second purchase.
- Appellant's transactions are not large.
- Larger purchases may be because the SNAP households are larger.

- Appellant requests a CMP.
- Appellant offered credit accounts.

In support of its contentions, Appellant provided the following documentation:

- Approximately 100 documents containing invoices;
- Approximately nine customer affidavits;
- Approximately 49 documents containing pictures;
- Approximately 100 pages of tax and bank documents;
- Approximately 23 pages of a credit account ledger;
- A report entitled *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program in Fiscal Year 2017* by Insight Policy Research;
- An ALERT Correlation Coefficient Calculation;
- An 11-page article entitled *What does SNAP benefit usage tell us about food access in low-income neighborhoods?;*
- A six-page article entitled *Shopping pattern and food purchase differences among Supplemental Nutrition Assistance Program (SNAP) households and Non-supplemental Nutrition Assistance Program households in the United States;*
- A one-page profile of SNAP households in Appellant’s congressional district;
- A 38-page FMI report entitled *U.S. Grocery Shopping Trends, 2016;*
- Four pages of an April 2016 article in *Convenience Store News;* and,
- A 49-page USDA report dated November 2016 entitled *Foods Typically Purchased by Supplemental Nutrition Assistance (SNAP) Households.*

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

### **ANALYSIS AND FINDINGS**

A review of the evidence in the Office of Retailer Operations and Compliance’s case file does not support the determination to permanently disqualify Appellant from participating as an authorized retailer in the SNAP. Accordingly, it is unnecessary to address Appellant’s contentions in this matter regarding trafficking.

Appellant admitted to accepting SNAP benefits in payment for items sold on credit. Accepting SNAP benefits in payment for items sold on credit is a violation of SNAP regulations and carries a penalty of a one-year disqualification from participating as a SNAP-authorized retailer.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

## **Administrative Reviews Independent of FOIA Process**

Appellant alleges not holding determinations in abeyance while FOIA responses are pending violates 7 CFR §278.6(b)(1) according to *Triple E Express vs. ROD*, Case No. C0191279 because Appellant is not given a full opportunity to respond. Effective October 26, 2020, the changes to 7 CFR §278.6 and 7 CFR §279.4 went into effect. These changes prohibit holding determinations and administrative reviews in abeyance while FOIA responses are pending. The finding in *Triple E Express* is based on outdated regulations.

### **CONCLUSION**

Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Clairton Mini Mart from participating as an authorized retailer in SNAP is modified to a one-year disqualification for accepting SNAP benefits in payment for items sold on credit. Appellant has already served two months of a disqualification period. Therefore, the one-year period of disqualification is reduced to ten months.

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. A new application for participation in SNAP may be submitted ten (10) days prior to the expiration of the ten-month disqualification period.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

March 17, 2022