

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

21 Stop Shop III, Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247607

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 a finding that the permanent disqualification of 21 Stop Shop III, Inc. (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 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

In a letter dated September 22, 2021, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of November 2020 through April 2021. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

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Appellant, through counsel, replied to the charged by letter dated October 2, 2021. Appellant denied the allegations and requested a hearing. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated October 4, 2021. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated November 17, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, 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 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 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) and (e)(1) 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 have engaged in trafficking SNAP benefits.

7 USC § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states, in part, that, eligible foods means:

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 § 271.2 defines trafficking, 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; . . .

7 CFR § 278.6(a) states:

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(b)(2)(ii) states, inter alia:

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(e)(1) reads, in part:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2020 through April 2021. This involved the following SNAP transaction patterns which are indicative of trafficking:

- Multiple transactions were made from the accounts of individual SNAP households within a set time period.
- The bulk of the households’ remaining benefits were depleted within short time frames.
- There were excessively large transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

In its November 23, 2021, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- This is the first time that the firm has been charged with any allegations.
- The allegations are uncorroborated and unsubstantiated.
- The imposition of a permanent disqualification is the most severe sanction.

Appellant submitted its October 2, 2021, response to the charges that it submitted to the Retailer Operations Division that provide the following summarized contentions, in relevant part:

- The government has not produced any receipts for the transactions.
- The investigator has a bias and has engaged in entrapment.
- The lack of a full evidentiary hearing has violated the clients substantive and procedural due process rights.
- Much of the store's income is derived from SNAP and it would be unreasonable for the store to jeopardize his livelihood as well as the customers' ability to purchase the basics of life.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized 21 Stop Shop III, Inc. as a small grocery on November 14, 2018. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 21, 2021, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Appellant is approximately 650 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and one point of sale (POS) device.
- The checkout area was small desk area with limited space for items with an ice cream cooler in front.
- There were no advertised meat bundles, seafood specials, or fruits/vegetables in boxes.
- There were no fresh unprocessed meat, poultry, or fish.
- There were a few packages of hot dogs and some deli meat in the deli cooler.
- Dairy included milk, cheese, butter, and a couple of units of yogurt.

- Fresh produce included a potatoes, onions, green peppers, lettuce, and tomatoes.
- Other staple foods available for purchase were juice, eggs, grains, bread, cereal, beans, pasta, and a selection of canned goods.
- There was an extensive hot food menu.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- Ineligible items include health and beauty aids and automotive products.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The highest priced items noted included on the day of the store visit was different brands of coffee with various prices- \$8.99, \$6.99, \$5.99, \$5.49, and \$5.29. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

Charge Letter Attachment

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in a set timeframe. This attachment documents 98 sets of transactions conducted by 54 different households that total \$16,008.52 in SNAP benefits that meet the parameters of this scan. For example, on December 12, and December 13, 2021, one household conducted three SNAP transactions at Appellant that total \$385.43 in SNAP (transactions #116, #117, and #118). Similarly, between January 23 and January 25, 2021, one household conducted four SNAP transactions at Appellant that total \$369.59 in SNAP (transactions #211, #212, #213 and #214). Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of forgotten items. A subsequent transaction in the case of one or two missed or forgotten items is not uncommon and is usually for a small or nominal amount.

The Retailer Operations Division compared Appellant to other nearby comparatively stocked small groceries. The other two stores did not conduct any similar transaction sets while Appellant conducted 98 transaction sets. This begs the question why households would be more likely to conduct multiple larger dollar transactions at Appellant than at other similar nearby stores.

Appellant has not offered any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

Charge Letter Attachment 2: The majority or all of individual recipient benefits were exhausted in unusually short periods of time. This attachment lists 55 SNAP transactions sets conducted by 35 different households totaling \$16,900.71. A government report on SNAP shopping patterns¹ indicates that on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefit. By the first week, the average household had redeemed over half of its benefit, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance. Therefore, transactions in which SNAP benefits are exhausted in one or a few transactions during a short period of time are suggestive of trafficking.

The Retailer Operations Division reviewed this transaction pattern at two nearby small groceries and determined that neither of the other two stores had any transaction sets that met the parameters of this scan. It is not unusual for violating retailers to conduct trafficking transactions in which a household spends most of its allotment at one store in a short period of time or in a single transaction. It strains credulity that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at Appellant.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 419 transactions as large as \$336.25, and that total \$36,410.78. Appellant's stock of eligible food items was consistent with that of a small grocery. There was no unprocessed fresh meat and limited fresh produce. The transactions listed were equal to the average SNAP transaction amount of a supermarket during the review period. There were no unique food items that adequately explains why the firm conducted so many unusual large dollar transactions compared to other similarly stocked convenience stores. The only items that Appellant sold on the day of the store visit that were greater than \$5.00 was coffee and these were found in limited amounts. Considering Appellant's offering of eligible food stock, these large dollar transactions are questionable and likely indicative of trafficking.

The Retailer Operations Division compared Appellant to the average for small groceries in the County. The Retailer Operations Division determined that Appellant conducted more SNAP transactions in each ten-dollar range between \$50.00 and \$109.99 compared to the average for small groceries in the county. For example, Appellant conducted 85 SNAP transactions in the

¹ Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.

\$50.00-\$59.99-dollar ranges whereas the average for small groceries was 16.58. There was also an unusual spike in the \$100.00- and \$109.99-dollar range where Appellant conduct 56 SNAP transactions and the average for small groceries in the county was 1.58.

The Retailer Operations Division also compared Appellant to two other small groceries. Appellant's average SNAP transaction amount and total SNAP redemption dollar value for the review period was greater than the other stores during the review period. In addition, the Retailer Operations Division also determined that the transaction pattern of Appellant exceeded the other two stores, as seen on the table herein. The data from this nearby store shows that the transaction patterns at the Appellant firm were unusual and indicative of possible trafficking violations considering Appellant's eligible food stock.

Store	Attachment 1 Pattern	Attachment 2 Pattern	Attachment 3 Pattern
Appellant	98	55	419
Store #1	0	0	4
Store #2	0	0	6

Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. However, within a one-mile radius, there are least 72 other authorized firms, including 25 other small groceries, one supermarket, and three super stores. The Retailer Operations Division reviewed three households identified in the charge letter to compare their shopping patterns at 21 Stop Shop III, Inc. to their shopping patterns at other SNAP authorized stores. Despite access to larger stores, each of the three households conducted excessively large transactions at 21 Stop Shop III, Inc. within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection and likely better prices.

Request for Hearing

Appellant, through counsel, requests a hearing. This disqualification is an administrative action and the SNAP regulations do not provide for a hearing, but rather for an administrative review of the action. The Act and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue.

Due Process

With regard to the Appellant's contentions with respect to due process, prior to a disqualification determination, the firm was given ample opportunity to reply to the charge letter and provide any information to justify the questionable transaction patterns detailed in the charge letter Attachments. Appellant, through counsel, provided information and documents in response to the letter of charges on October 2, 2021. Counsel subsequently requested and was granted an extension in time for providing a response to the letter of charges. However, no additional information was submitted by counsel or the Appellant in response to the charge letter.

The second level of due process involves an administrative review, of which the Appellant, through counsel, has likewise availed itself and in the process of which the Appellant was granted an additional three weeks within which additional information may be provided in support of the request for review. Therefore, any evidence and information that the Appellant presented to the Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures about the Appellant's right to a fair and thorough review. Appellant has exercised its opportunity to reply to the charge letter and its administrative review rights, and by doing so has availed itself of the full complement of the agency's statutory obligations regarding due process.

No Prior Violations

Appellant contends that this is the first time that there has been any allegation of impropriety against the firm. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Appellant Hardship

Appellant contends that a SNAP disqualification would impose a financial hardship. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations.

Evidence

Appellant contends that the allegations are uncorroborated and unsubstantiated. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking. In the present case, the data presented in the Attachments is based on the SNAP EBT transactions conducted at the Appellant firm during the review period. FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which states, inter alia, “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.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no credible evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity in the present case.

CIVIL MONEY PENALTY

Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “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.” [Emphasis added.] Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations.

CONCLUSION

The Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained. The Retailer Operations Division’s determination that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations is also sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 the Appellant's owner resides or is 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, 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

May 17, 2022