

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

**7 Super 7 Food Market,
Appellant,
v.
Retailer Operations Division,
Respondent.**

Case Number: C0248101

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of 7 Super 7 Food Market (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) 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 January 25, 2022, 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 July 2021 through December 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 charges by letter on February 7, 2022. Appellant explained that the transactions were not unusual and resulted from change in shopping patterns as a result the Pandemic. After considering the retailer’s original reply and the evidence, the Retailer Operations Division issued a determination letter dated April 6, 2022. 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.

By letter dated April 22, 2022, Appellant, through counsel, appealed the Retailer Operations Division’s determination and requested an administrative review. The administrative review 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 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 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 § 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(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 § 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(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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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.]

SUMMARY OF THE CHARGES

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

- There were multiple transactions made from individual benefit accounts within a set time period.
- There were excessively large purchase 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 April 22, 2022, administrative review request, and subsequent correspondence e-mailed on May 27, 2022, Appellant, through counsel, provided the following summarized contentions:

- Appellant requests dismissal of the charges of a CMP.
- During the period under investigation, Appellant was having staffing problems due to the Pandemic.
- The store owner was also experiencing health problems and was unable to be at the store at all operating hours which is his normal schedule.
- If trafficking as alleged did occur, it was perpetrated by an employee who has since been terminated.
- The store owner requests that he not be punished for the actions of his employees and the store owner has never trafficked and never benefited from trafficking.

In support of its contentions Appellant submitted a list of employees with start and end dates of employing to show that the employee has been terminated effective January 31, 2022.

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 7 Super 7 Food Market as a convenience store on August 22, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 8, 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:

- 7 Super 7 Food Market is approximately 775 square feet.
- There was one small checkout space, one cash register, and one point-of-sale device.
- Checkout occurred through a small night window.
- There were no shopping baskets or shopping carts for customer use.
- There was no fresh unprocessed meat, poultry, or fish. There were packages of hot dogs and deli meat.
- Fresh produce included a bag of potatoes, a head of lettuce,
- Dairy included limited amounts of cheese, butter, and milk.
- Other staple foods available for purchase were juice, eggs, cereal, pasta, rice, bread, beans, cereal, pasta, and a limited selection of canned goods.
- Frozen food included chicken, pizza, dinners, fish sticks, and sandwiches.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included lottery, clothing, health and beauty products, cleaning products, and paper 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 on the day of the store visit were the following items: frozen chicken sandwiches (\$19.99 per pound); frozen chicken pieces (\$9.99 per pound); frozen fish sticks (\$6.99); coffee (\$6.99 per pound); frozen pizza (\$5.99), and cereal (\$5.99). There were limited amounts of each of these higher priced items with no more than four of each of these items. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

Charge Letter Attachments

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 unusually short time frames. This attachment documents 53 transaction sets conducted by 28 households that total \$6,681.82 in SNAP benefits that meet the parameters of this scan. For example, one household transacted \$260.00 in SNAP benefits between October 1, and October 3, 2021 (transactions #107-#109). Another household conducted four SNAP transactions at Appellant between December 1, 2021, and December 3, 2021, totaling \$230.00 (transactions #118-#121). 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.

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. 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 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. Appellant is not set up to provide for all of one’s food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

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

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 192 transactions as large as \$120.86, and that total \$12,908.68. The frequency of high-dollar purchases in a six-month period call into question the legitimacy of these transactions.

The SNAP transactions noted in this Attachment are questionable because they are inconsistent for this type of store and the store’s stock. Since Appellant’s business carries no fresh or frozen unprocessed meat, poultry, or fish, limited fresh produce, and minimal staple food stock, these patterns are deemed to be suspicious. Moreover, Appellant has no shopping baskets or carts thereby making it difficult to facilitate the quantities of eligible food items required to make up these high dollar transactions. Therefore, it is unlikely that the food items purchased in these large dollar amounts could be carried to the register without the use of baskets or carts and more likely that the amounts were contrived.

The Retailer Operations Division compared Appellant to three other convenience stores located nearby. Appellant conducted more SNAP transactions in each ten-dollar range from \$50.00 to \$99.99 than each of the three other stores. The Retailer Operations Division also determined that the transaction pattern of Appellant exceeded the other three stores, as seen on the table herein. The data from these nearby stores show that the transaction patterns at the Appellant firm were highly unusual and indicative of possible trafficking violations.

Store	Attachment 1 Pattern	Attachment 2 Pattern
Appellant	53	192
Store #1	11	91
Store #2	0	5
Store #3	7	43

Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that within a one-mile radius of Appellant there are 49 other authorized stores, including three large groceries located within a half-mile radius. Each of the 146 households that conducted a flagged transaction on Attachment 2 also conducted at least one transaction at a large grocery, supermarket, or superstore during that same period. 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 of fresh meat and produce and likely better prices. The inventory and layout at 7 Super 7 Food Market does not support these transactions.

The Retailer Operations Division reviewed three households identified in the charge letter to compare their shopping pattern at Appellant to their transaction activity at other SNAP authorized stores. The household analysis showed that the households were more likely to conduct flagged transactions at Appellant than at the many other stores that they shopped. For example, Household #1 conducted 29 SNAP transactions at Appellant and 26 of these transactions were flagged. This household shopped at nine other stores but only conducted one other flagged transaction at another store. Household #2 conducted 14 flagged SNAP transactions at Appellant while shopping at 26 other authorized firms with no other flagged transactions. Similarly, Household #3 conducted 27 flagged transactions at Appellant while shopping at a total of 28 other firms and only conducting three other flagged transactions at one other store. Lastly, Household #4 conducted 52 flagged transactions at Appellant while shopping at nine other stores and conducting only two other flagged transactions. When a firm has a pattern of several customers shopping in a different manner than other nearby stores, the question becomes why the pattern exists at this store. Appellant did not provide any explanation for these unusual patterns.

Ownership not involved in the Transactions

In a written statement provided to the Retailer Operations Division, the owner acknowledged that after reviewing the transactions an employee conducted the violations. Although ownership was allegedly not involved in the violations, it cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Ownership signed the FNS application to become a SNAP authorized retailer on July 13, 2016, which included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking.

Corrective Action

Appellant alleges to have terminated the employee that conducted the transactions. Regarding this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operation Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division’s action. It is not the authority of this review to consider what subsequent remedial actions have been taken or may be planned so that a store may begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment based on alleged or planned after-the-fact

corrective actions implemented after investigative findings of program violations. Therefore, Appellant's contention that it terminated the employee does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Evidence

Counsel claims that the decision is based on inadequate proof, which will deprive this vendor of his business and will cause him irreparable injury and damage is inconclusive and arbitrary. Counsel further alleges that the letter of charges is nothing more than unsubstantiated general accusation; it has no merit; and to base a decision upon such an accusation is to deprive Appellant of due process.

The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP 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 (provided by ALERT), 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 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 at issue in the present case.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter, and that no extension of time could be granted for making the request or for providing the required evidence.

Appellant, through counsel, contends that it had an effective compliance policy and program to prevent program violations in place. Counsel describes that the store's employees are trained and monitored when they are initially hired and provided a detailed review of SNAP guidelines. The owner then conducts performance reviews testing cashiers through mock transactions. Counsel further explains that the owner was not involved in the trafficking nor did they benefit from the transactions. However, the record shows that Appellant did not provide any evidence related to the criteria for a trafficking CMP under 7 CFR § 278.6(i) to establish that the firm had an effective personnel training program in place. Therefore, the Retailer Operations Division determined that Appellant fell short of the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR § 278.6(i).

The standard of substantial evidence is difficult to meet. Nevertheless, such is the standard required by the regulations, and to which Appellant is held during the course of this review. Appellant fell short of the regulatory standard for a trafficking CMP as it did not provide any evidence that it met all four criteria required by 7 CFR § 278.6(i). Therefore, Retailer Operations' decision not to impose a trafficking CMP in lieu of disqualification is sustained.

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 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 also determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

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

September 21, 2022