

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

**D&D Grocery & Pizza,

Appellant,

v.

Retailer Operations Division,

Respondent.**

Case Number: C0248094

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 D&D Grocery & Pizza (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 February 2021 through July 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 did not respond to the charge letter. After considering 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 October 13, 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 February 2021 through July 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 October 13, 2021, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant did not violate any laws and regulations of the SNAP.
- About 95% of the items that Appellant sells are dairy products, bread, cereal, beverages, and other food items.
- Appellant accepts the EBT card only for eligible food items.
- Each child has its own PEBT card.
- Most households have more than 3 EBT Cards and PBT cards and use the cards at the same time to shop at Appellant.
- Appellant provides credit for food purchases and maintains a credit book for each customer.
- When Appellant receives its SNAP benefits, the households pay off the credit balance.
- Some households purchase large amount for their special needs.

In support of its contentions, counsel submitted 57 photographs and 19 customer statements.

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 D&D Grocery & Pizza as a convenience store on September 15, 2020. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 24, 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 4,400 square feet.
- There were two shopping baskets and one shopping cart for customer use.
- There was one cash register and one point of sale (POS) device.
- There was no optical scanner.
- The checkout area was small desk area with limited space for items.
- 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,
- Dairy included milk, cheese, butter, sour cream, and one container of yogurt.

- Fresh produce included a small bowl of lemons and limes, a couple of cucumbers, a bag of oranges, and four apples.
- Frozen food included a couple of bags of vegetables, some dinner, sandwiches.
- Other staple foods available for purchase were juice, eggs, grains, bread, cereal, beans, and pasta.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- Ineligible items include alcohol, tobacco products, lottery, automobile products, health and beauty aids, cleaning, paper goods, and clothing.

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 ground cinnamon - \$8.99; chamomile tea - \$8.99; a 12 pack of soda - \$6.99; ice cream- \$6.49 and \$5.99; and beef jerky - \$5.99. There were only a few units of these larger priced items. 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 119 sets of transactions that total \$27,840.00 in SNAP benefits that meet the parameters of this scan. For example, on June 2, 201, one household conducted four SNAP transactions at appellant that total \$441.48 in SNAP (transactions #77-80). Similarly, on June 16, 2021, one household conducted three SNAP transactions at Appellant that total \$563.99 in SNAP (transactions #119, 120, and 121). On July 15, 2021, a household transacted a total of \$913.03 at Appellant. 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.

Appellant states that the store accepted SNAP benefits as repayments on credit accounts from households. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Appellant submitted some customer statements to support its claim of credit accounts. There was no attempt to match the flagged SNAP transaction with payments made on credit accounts. Appellant contends to have a credit log book but this information was not submitted as evidence.

It is possible that a household with a credit debt may pay off the amount owed, and then make a subsequent purchase shortly afterward, typically during the same visit to the store. That might explain two transactions in quick succession. Furthermore, two, three or four transactions spread out over several hours seem unlikely to be explained by credit repayments. It seems unlikely that a household would visit Appellant to repay their credit account, and then return hours later to make additional food purchases, especially when the household has shopped at larger stores that offer a greater variety of food at lower prices within a short time of visiting Appellant.

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 37 SNAP transactions sets conducted by 15 different households totaling \$19,388.68 Many households appear to have conducted a balance check before conducting a transaction at transaction at Appellant. The balance check was likely performed by Appellant to obtain the SNAP balance on the card. The next transaction occurring in quick succession was either for the entire balance or close to the balance. This is a suspicious shopping pattern and is indicative of trafficking.

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.

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.

The Retailer Operations Division reviewed this transaction pattern at four nearby convenience stores and determined that none of the other 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 477 transactions as large as \$815.99, and that total \$53,645.74. During the review period, Appellant, conducted 85% more SNAP transactions than the average for convenience stores in the state. Appellant's stock of eligible food items was consistent with that of a convenience store. There was no unprocessed fresh meat and limited fresh produce. 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. 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 four other convenience stores. 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 four other stores. The Retailer Operations Division also determined that Appellant conducted more SNAP transactions in each ten-dollar range between \$50.00 and \$219.99 compared to the other four stores during the review period. The data from these nearby stores show that the transaction patterns at the Appellant firm were unusual and indicative of possible trafficking violations considering Appellant's eligible food stock.

The Retailer Operations Division reviewed three households identified in the charge letter to compare their shopping patterns at D&D Grocery & Pizza to their shopping patterns at other SNAP authorized stores. On June 16, 2021, Household #1 transacted \$77.96 at a super store and then transacted an even \$165.00 at Appellant. On May 11, 2021, Household #2 transacted \$139.31 at Appellant and then transacted \$324.74 at a super store. Similarly, on March 10, 2021, Household #3 transacted \$43.80 at a supermarket and then the following day transacted a total of \$109.62 at Appellant. Despite access to larger stores, each of the three households conducted excessively large transactions at D&D Grocery & Pizza 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.

Customer Statements

Counsel submitted 18 customer statements in support of its administrative review request. The transaction history of each of these 18 households was reviewed. Five of the households could not be located. Three households did not conduct any flagged transactions at Appellant during the review period. There were ten households that submitted statements that conducted a total of 71

of the flagged SNAP transactions during the review period. These households also shopped at several other stores during the review period and many of these transactions appear questionable. The Retailer Operations Division determined that the customer statements often did not align with the household's transaction history.

In sum, the customer declarations are unconvincing. Customers engaging in trafficking violations are unlikely to admit to such conduct. Customer statements do not typically represent a household's actual shopping behavior, as households generally do not retain records of transactions and often do a poor job of recalling spending patterns at a particular location. Although some of the listed transactions may have been repayments on credit accounts, most of the SNAP transactions remain questionable. The customer statements are insufficient evidence that the flagged transactions were for eligible food items only.

Photographs

Appellant submitted photos of its inventory. The photos do show that the store is better stocked than the day of the store visit. However, this is likely in direct response to the charges and also the stock still does not adequately explain why SNAP recipients are frequently spending large amount of SNAP benefits at a minimally stocked convenience store.

Evidence

The ALERT system is 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 little 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 owners 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, 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

April 21, 2022