

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

**Racing Mart,
Appellant,**

V.

**Retailer Operations Division,
Respondent.**

Case Number: C0246325

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Racing Mart, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated September 13, 2021.

AUTHORITY

7 U.S.C. § 2023 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

By charge letter dated August 11, 2021, Retailer Operations Division informed ownership that Appellant was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 271 – § 278, based on EBT benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The charge letter stated, in relevant part, that “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.”

In email correspondence dated August 28, 2021, Appellant responded to the charge letter and provided EBT transaction receipts. Appellant stated that it has provided EBT receipts that correspond with the specific receipt inquiry. It was unable to obtain all 500 receipts as its system

only allows viewing for the past 3 months therefore the EBT receipts provided date back to May 29, 2021. There were 131 pages of a computer-generated transaction detail provided.

Retailer Operations Division gave consideration to the Appellant's reply, through counsel, and evidence of the case, and issued a determination letter dated September 13, 2021. This letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 22, 2021, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. 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 actions should be reversed. That means an 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 & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program 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 ..."

7 CFR § 278.6(c) reads, in part, "*Review of Evidence*. 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) ...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..."

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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six-month period of January 2021 through June 2021. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time-period.
2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

The first 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

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. All EBT transactions which total 497, were the purchase of items that were acceptable and within the range of times permitted by SNAP regulations.
2. The basis for the alleged violations of the SNAP Regulations contains store visit photographs which were not shared with Mr. Patel.
3. The series of transactions were not abnormal due to COVID conditions.
4. Racing Mart is a business established with multiple fuel pumps in addition to a Mini Mart that contains \$250,000 in food inventory at any given time.
5. My client would like the opportunity to have a Field Inspector visit his business.

In support of its position during the review process, Appellant, through counsel, provided a copy of the email correspondence with the Retailer Operations Division indicating that EBT transaction receipts were provided. No additional documentation was provided during this review.

The preceding may represent a brief summary of Appellant’s contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during an April 8, 2021, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

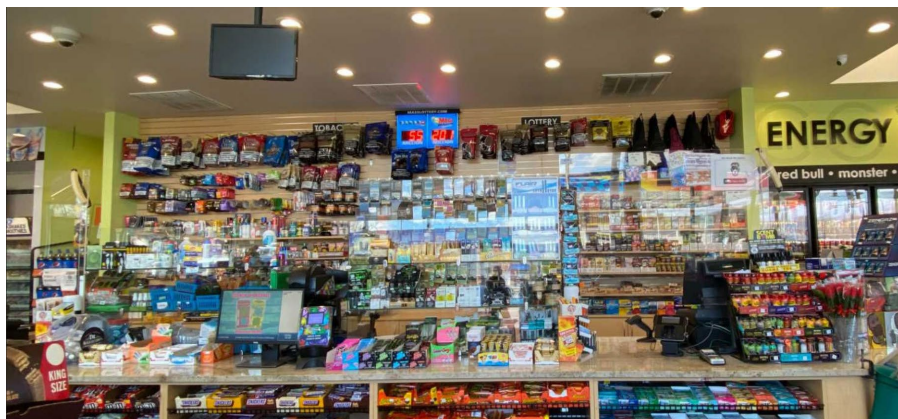
- One checkout area with two (2) cash registers and two (2) POS devices with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 2000 square feet.
- Three (3) hand baskets but no shopping carts available.
- Store has an available optical scanner. No specialty registers available.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No Food is stored in an area outside of public view.
- No storage freezers or coolers and no food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Tony's Pizza (\$8.99), Red bull (\$7.99), Various Jack Link (\$7.39), Provolone Cheese (\$6.99), Banquet Chicken (\$9.59), Steak Sandwich (\$6.99).
- Store stocks a significant amount of non-food items such as but not limited to household products, clothing items, tobacco products, automotive products, gasoline, health and beauty aids, pet food and cleaning products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry, and fish products. No fresh fruits or produce, no fresh meat or poultry. Meats are canned, packaged, pre-cooked and/or frozen.
- No Kitchen but there are prepared sandwiches.
- No foods sold for onsite consumption.
- Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Store is also a fully operational gas station. The Dunkin Donuts and Liquor Stores are not associated with Racing Mart.

The second issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store during the review period. As

there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge letter – Multiple transactions were made from the accounts of individual SNAP households within a set time-period.

During the review period there were 34 sets of 81 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time-period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. Although there are two registers and two POS devices, the store visit photographs show that there is only one small area available for checkout that is surrounded by other smaller items for sale. The additional checkout area is blocked by a lottery monitor and unavailable for use. This limits the ability to conduct multiple transactions in a set time-period and the number of items that SNAP recipients are able to place on the counter for purchase. This means that Appellant is physically incapable of conducting some of the rapid SNAP transactions in the amounts cited in the charge letter. Appellant only provided 3 hand baskets and no shopping carts which also limits the shopper's ability to transport the number of items no doubt needed for the large SNAP transaction amounts cited in the charge letter.



Register Area

The record reflects that Appellant provided 127 computer generated transaction receipts for the review period and not actual register or corresponding EBT receipts. These receipts appeared to represent 131 of the 497 SNAP transactions however the information presented on the receipts appeared questionable. The store visit documentation indicates that Appellant has a scanner at the register. Some of the alleged receipts had items listed, some of which were listed more times than seem logical for a normal purchase, and other receipts had no items listed and simply read, groceries, non-taxable, snack, frozen food, etc. As an example, it is questionable that a SNAP recipient would visit a convenience store/gas station and purchase 12 bottles of corn oil, eight boxes of cereal and a small bag of chips. See receipt below as provided by Appellant.

sale

<i>Desc</i>	<i>PLU Cat</i>	<i>Dept</i>	<i>Unit Price</i>	<i>Qty</i>	<i>Total Network Code</i>	<i>Applied Tax Typ</i>
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Cocoa Pebbles 11 oz	00884912129512/000 GROCERY	GROCERIES	4.99	1	\$4.99 470	
Cocoa Pebbles 11 oz	00884912129512/000 GROCERY	GROCERIES	4.99	1	\$4.99 470	
FRST FLAKE	00038000199042/000 GROCERY	GROCERIES	6.99	1	\$6.99 470	
FRST FLAKE	00038000199042/000 GROCERY	GROCERIES	6.99	1	\$6.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
FRST FLAKE	00038000199042/000 GROCERY	GROCERIES	6.99	1	\$6.99 470	
FRST FLAKE	00038000199042/000 GROCERY	GROCERIES	6.99	1	\$6.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Lay's Limon	00028400324236/000 GROCERY	GROCERIES	1.99	1	\$1.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	
Cocoa Pebbles 11 oz	00884912129512/000 GROCERY	GROCERIES	4.99	1	\$4.99 470	
Cocoa Pebbles 11 oz	00884912129512/000 GROCERY	GROCERIES	4.99	1	\$4.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$-9.99 470	
Mazola Corn Oil	00761720987490/000 GROCERY	GROCERIES	9.99	1	\$9.99 470	

Ticket: **1010688** Date/Time: **2021-06-04 17:50** Duration: 135 Seconds Register: 101 Cashier: **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** (id:10) Store Num: **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**
MOP: **EBT** Amount: **\$149.81**
Total Non-Tax: **\$149.81** Total Tax: **\$0.00** Total Trans Amount: **\$149.81**

Other receipts have questionable transactions that include quantities of 15 or more of a grocery nontaxable item without descriptors. More importantly, the store visit photographs do not indicate that Appellant's stock would have been adequate to cover the SNAP transactions as presented. Appellant did not provide any purchase invoices or receipts to verify that it maintained sufficient stock in volume and/or variety to justify the purchases as provided on the receipts or its SNAP redemptions during the review period. Although Appellant carried some frozen pre-cooked foods and prepackaged sandwiches, there were no high dollar items and no ethnic or specialty foods available. Appellant's contentions and stock do not justify nor explain the SNAP transaction patterns or SNAP redemptions during the review period.

All receipts were accepted however they did not cover all SNAP transactions during the review period and do not adequately justify the transaction patterns as cited in the charge letter. It is also important to note that the receipts, as provided by Appellant, fail to show the EBT card number associated with the purchase or if the purchase was a swipe or manual transaction. Upon review it appears that there is no logical reason why a SNAP recipient would continuously conduct these types of transactions at a convenience/gas station.

Appellant, through counsel, did not provide any additional documentation to support its claims to justify the SNAP transactions cited in this Attachment. Based on the analysis above and Appellant's failure to adequately show that all the transaction sets were as a result of legitimate

SNAP purchases, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transaction patterns cited in Attachment 1 evidence trafficking as the most likely explanation.

Attachment 2 of the Charge letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

During the review period, there were 416 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store’s inventory of low-priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. These transactions ranged from \$40 to \$258.55 with the largest transaction sum, during the review period, being \$280.53. Appellant’s SNAP transactions were 85 percent higher than those of other convenience stores in the county. Appellant’s stock was neither special nor unique to adequately justify the large transaction amounts found in this attachment during the review period. Customers visiting a gas station/convenience store usually run in to grab a quick snack or something on the go and don’t typically purchase large amounts of staple foods or conduct multiple large grocery purchases. Additionally, the limited counter space indicates that these transactions are highly questionable since there is limited available space to place more than a few items at a time.

The record reflects that there are 36 SNAP authorized retailers within one mile of Appellant’s store. Retailer Operations Division conducted a shopping analysis of the shopping habits of four of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant’s firm. This again indicates that lack of access to other stores is not at issue and Appellant’s store is not considered the primary means for SNAP recipients staple food purchases. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Hampden County area of Massachusetts. This is another strong trafficking indicator.

The record also reflects that Appellant’s total purchase transaction count and total purchase dollar volume is exceedingly more in comparison to the small and medium grocery stores in the county which are selling a much larger quantity, quality, and variety of staple foods at seemingly better prices. Based on the analysis above and Appellant’s failure to adequately show that all the transaction were as a result of legitimate SNAP purchases, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transaction patterns cited in Attachment 2 evidence trafficking as the most likely explanation.

As noted, 7 CFR § 278.6(a) states that 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 based on evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence of invoices of food in inventory to cover Appellant's reasoning for the SNAP transaction totals for the review months, the lack proof and/or explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other small grocery stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division' adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deemed pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to 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 with regard to Appellant's right to a fair and thorough review.

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

CIVIL MONEY PENALTY

The 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 dated August 11, 2021. 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. Therefore, the Retailer Operations Division' decision, not to impose a trafficking CMP in lieu of disqualification, is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

Retailer Operations Division' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Racing Mart, from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking 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, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Racing Mart, is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

April 4, 2022