

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

**Renaldis One Stop Citgo, LLC**

,

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent**

**Case Number: C0247360**

**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 Renaldis One Stop Citgo, LLC (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 December 15, 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 May 2021 through October 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 reply to the charge letter. After considering the evidence, the Retailer Operations Division issued a determination letter dated December 29, 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 January 5, 2022, 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 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 May 2021 through October 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 store conducted EBT transactions that were large based on the observed store characteristic and recorded food stock.

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 January 5, 2022, administrative review request and subsequent correspondence postmarked February 11, 2022, Appellant provided the following summarized contentions, in relevant part:

- In the past an employee sold ineligible items for SNAP benefits, but the firm conducted training and corrective action.
- The owner implemented a new rule regarding house accounts that would include printing a register receipt of the items the regular customer would like to purchase, and the items are then reviewed by management to verify eligibility.
- SNAP sales are denied if a manger is not in the store to review the items.
- A permanent disqualification would hurt the business significantly.
- The business is located on a very high traffic state turnpike which many people stop in on their way back and forth from work.
- About 500 feet from the store is a motel where many SNAP recipients reside.
- Most of the people residing at the motel do not have cars

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

- Photograph of SNAP poster hung by register.
- Eight customer accounts summary sheets and/or POS receipts.
- Fifteen pages of a purchase tracking document listing Amazon.com orders totaling \$19,184.81.

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 Renaldis One Stop Citgo, LLC as a convenience store on July 26, 2011. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 1, 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 500 square feet, with additional storage of mostly beverages.
- There were no shopping baskets and no shopping carts 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 with very limited space to place items.

- There was no fresh meat, poultry, or fish.
- The only dairy item was milk.
- The only fresh produce appeared to be tomatoes which were likely used for the prepared food items.
- Other staple foods available for purchase were juice, eggs, pasta, and a very limited selection of canned goods.
- There were some frozen pizzas, a few frozen dinners, and a couple of boxes of frozen fried chicken.
- Appellant advertised the sale of prepared-made to order sandwiches and cold cuts by the pound.
- There is a kitchen area that prepares hot food.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- Ineligible items included gas, lottery, tobacco, cleaning products, paper products, and health and beauty aids.

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 a case of water - \$16.99; four pack of Red Bull - \$11.96; frozen fried chicken - \$9.99; beef jerky - \$7.99; coffee - \$5.99; and a pint of ice cream - \$5.99. 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. In fact, on the day of the store visit Appellant did not meet SNAP eligibility criteria as it carried too few items in the dairy staple food category. To meet eligibility criteria for authorization a firm must have at least three stocking units of three different varieties if each of the four staple food categories. Appellant only carried milk on the day of the store visit and was missing two qualifying varieties of dairy.

### **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 49 sets of transactions conducted by 13 households that total \$10,653.92 in SNAP benefits that meet the parameters of this scan. One household transited a total of 392.94 in SNAP benefits in less than seven hours (transactions #83-#86). Another household conducted three SNAP transactions in less than an hour that total \$331.48 (transactions #59-#61) on September 26, 2021. Similarly, on October 2, 2021, another household conducted two SNAP transactions within one hour that total \$391.93 in SNAP benefits (transactions #45 and #46). 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.

Appellant explains that it is located next to a motel that houses many SNAP recipients. 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, or price advantage. The second and third transactions in each set are too large to consist of forgotten items.

Appellant explains that it is in a high traffic area and many customers stop on the way to and from work. This may be true, but it does not explain why their transaction totals would be large than average transaction amount at convenience stores in the State during the review period. In addition, Appellant conducted 70% less SNAP transactions than the average for convenience stores in the State during the review period. The evidence does not support that Appellant has more foot traffic from SNAP customers than the average convenience store in the State.

The Retailer Operations Division compared Appellant to the closest authorized convenience store. The other store only conducted three similar transaction sets while Appellant conducted 49 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 sufficient evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 246 transactions as large as \$343.52, and that total \$21,327.83. Appellant's average SNAP transaction amount was 200% greater than the average for convenience stores in the State during the review period. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. Appellant had no shopping baskets or shopping carts with limited counter space and limited staple food items. Appellant is a gas station/convenience store with no fresh meat or produce. As indicated previously, on the day of the store visit Appellant did not even meet SNAP eligibility criteria as it carried too few items in the dairy staple food category with only stocking milk. 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 closest convenience store and found that Appellant conducted less than half the SNAP transactions that the other store conducted but its average SNAP transaction amount was almost two times the other store's average SNAP transaction amount. The Retailer Operations Division also determined that Appellant's transaction patterns exceeded the other store. Whereas Appellant conducted 246 flagged large dollar transactions during the review period, the other convenience store only conducted 38 SNAP transactions that met the parameters of this scan. The data from this nearby store show that the transaction patterns at the Appellant firm were unusual and likely indicative of possible trafficking.

violations. The Retailer Operations Division also determined that Appellant conducted more SNAP transactions in each ten-dollar range between \$40.00 and \$229.99 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 the transaction activity of four households that conducted some of the flagged transactions. Three of these households conducted SNAP transactions at a super store, supermarket, or large grocery within one day of its flagged transaction at Appellant. For example, on May 2, 2021, Household #1 transacted \$44.44 at a super store and then conducted two SNAP transactions that total \$219.81 in SNAP benefits at Appellant. Similarly, on August 2, 2021, Household #2 conducted two SNAP transactions at Appellant that total \$232.40 and then transacted just \$41.11 at a supermarket. On August 7, 2021, Household #4 transacted \$97.25 at Appellant and then transacted \$36.56 at a supermarket. The evidence supports that these households had access to transportation within a short time frame of their unusual large transactions at Appellant. 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 selection of fresh meat and produce and likely better prices.

### **Credit Payments**

Appellant states that the store had a policy in place after its previous violations and disqualification to create "House Accounts" for customers. The customer would tell the cashier what items it would like to purchase and then a receipt would be printed for management to review. The manager would review the items and then the household would make a payment for these items. This process is in violation of SNAP regulations as repayment of credit accounts with SNAP benefits is not allowed, and SNAP customers cannot be treated any differently than regular customers.

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 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 "House Account" logs to support its claim of credit accounts. There was no attempt to match the flagged SNAP transaction with payments made on credit accounts. In addition, lists of transaction totals and POS receipts do not list the items that were purchased to determine if the items were eligible food items only. Thus, the evidence submitted was insufficient.

### **Invoices**

In support of its contentions, Appellant submitted a transactions report detailing its purchases from Amazon. The document did not show what items were purchased from Amazon as it only listed the total transaction amounts. It does not specify what items were purchased to determine what

items were food items. However, even if all the purchased were food items, the invoices do not support that Appellant purchased sufficient inventory to justify its SNAP redemptions.

Thus, there is insufficient evidence to support that each of the questionable transactions are for eligible food items only. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the store trafficking in SNAP benefits.

### **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.

### **Household Hardship**

Appellant explained that permanent disqualification would be hardship for households that live nearby and do not have transportation. When there is a hardship to SNAP households, FNS may impose a hardship CMP on a firm in lieu of a disqualification where there is a lack of authorized stores in the area. However, 7 CFR § 278.6(f)(1) clearly states that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.” Because the Retailer Operations Division has taken action to permanently disqualify Appellant’s firm, a hardship CMP in lieu of disqualification cannot be granted.

### **Evidence**

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 based on 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**

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.” 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 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 18, 2022