

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

Anna Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248043

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 Anna Food Mart (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 January 18, 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 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).

Appellant replied to the charger letter on January 24, 2022, and submitted invoices on February 24, and 26, 2022. Appellant explained that the questionable transactions were due to allowing credit payments to be made with SNAP benefits. After considering the retailer's response and the evidence, the Retailer Operations Division issued a determination letter dated July 11, 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 a July 19, 2022, e-mail, Appellant 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 July 19, 2022, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant requests reconsideration.
- Appellant submitted all its invoices for those months.
- Appellant does not have the store anymore.

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 Anna Food Mart as a convenience store October 18, 2012. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 15, 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 1700 square feet with about 400 square feet of storage outside of public view.
- The checkout counter was small with limited space to place items.
- There was one shopping basket and one shopping cart for customer use.
- There was one cash register and one point of sale (POS) device.
- There was no optical scanner.
- There was no fresh unprocessed meat, poultry, or fish.
- Dairy included milk, cheese, butter, and sour cream.
- Fresh produce included bananas.
- Other staple foods available for purchase were eggs juice, bread, cereal, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- There was a hot and prepared food menu.
- Ineligible items included lottery, alcohol, tobacco, paper goods, cleaning products, paper goods, and health and beauty aids.
- Dusty cans as well as expired products were noted.

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 mix and match cases of soda two for \$12.00; Nestle Nido - \$8.99; beef jerky - \$7.99; coffee - \$5.99; two cans of Red Bull - \$5.50; and a bag of Tostitos - \$5.29. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

Charge Letter Attachment

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

Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in a set timeframe. This attachment documents 68 sets of transactions conducted by 27 households that total \$15,801.14 in SNAP benefits that meet the parameters of this scan. On June 18, 2021, one household conducted three SNAP transactions at Appellant totaling \$446.85 (transactions #45-47). Similarly, on August 21, 2021, and August 22, 2021, another household conducted three SNAP transaction at Appellant that total \$581.77 (transactions #113- #115). On August 2, 2021, and August 2, 2021, a different household conducted three larger than average SNAP totaling \$415.77 (transactions #79- #81). 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 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. 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 second and third transactions in each set are too large to consist of forgotten items.

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 332 transactions as large as \$390.99, and that total \$29,538.04. The substantial number of high-dollar transactions in a six-month period call into question the legitimacy of these transactions.

The checkout area was a small counter space upon which it would be difficult to place many items for purchase. The store visit supported that Appellant was a convenience store with no fresh meat, poultry or fish, and the only fresh produce was some bananas. Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding

the average SNAP transaction amount of similar type stores.

When compared to the Collin County convenience store average during the review period, Appellant's total SNAP dollar volume was 254% greater than the average convenience store. Furthermore, Appellant's average SNAP transaction was 241% greater than the average convenience store transaction in the County. The Retailer operations Division determined that Appellant conducted more SNAP transaction in each ten-dollar range between \$20.00 and \$179.99 than the average for convenience stores in the County. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors.

Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. The Retailer Operations Division determined that there are seven other authorized stores within a three-mile radius of Appellant. The Retailer Operations Division reviewed the transaction history of three households that conducted some of the questionable flagged transactions. Each of the three households conducted a flagged transaction at Appellant within one day of visiting a supermarket, super store, or large grocery 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 of fresh meat and produce and likely better prices.

Invoices

Appellant explained that it submitted all of its invoices. The record shows that the Retailer Operation Division reviewed the inventory receipts and invoices. Some of the invoices were for other stores and there were some concerns with the credibility of some of the invoices provide however each of the invoices was included. However, even with sufficient food stock purchased at Appellant to mathematically support high dollar transactions, the frequent large dollar transaction and large dollar transactions are still questionable. The Retailer Operations Division determined that most of the invoices pertained to the purchase of its snacks and other low-dollar food items.

Credit

Appellant explains that the flagged transactions are the result of the retailer allowing customer to purchase items on credit and make repayment with SNAP benefits. A credit payment is usually the first payment of the month. The purchasing patterns show that in at least 31 of the transactions, the SNAP customer made at least two large payments within hours and twenty-two of these 31 sets occurred within five hours. The Retailer Operations Division found it questionable why recipient would make a credit payment and then make a second payments within seconds or minutes or come back to the store within a short amount of time to make another large purchase. The Retailer Operations Division requested documentation of the credit accounts and the retailer submitted a reply on June 17, 2022. The Retailer Operations Division could not open the file and on June 27, 2022, requested that the retailer send the information in a different format. The retailer did not submit any additional information supporting the credit accounts to the Retailer Operations Division of with its administrative review request.

Evidence

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." [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. The Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

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 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

March 7, 2023