

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

Arishree Food Mart LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0262709

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Arishree Food Mart LLC (hereinafter “Appellant”).

ISSUE

The issue accepted for review is whether the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Arishree Food Mart LLC.

AUTHORITY

7 U.S.C. § 2023 and its 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

Arishree Food Mart LLC was initially authorized to participate in SNAP on September 15, 2021. In a letter dated December 19, 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 between the months of June 2022 through November 2022 and information obtained during a visit to the store by an FNS contractor on December 5, 2022. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as

provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10 days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

On December 23, 2022, Appellant responded to the charge letter. Appellant stated the store sells big bags of frozen chicken. These sales caused the transaction activity in the charge letter.

After evaluating Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 4, 2023. This letter informed Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In an email dated January 6, 2023, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In an email correspondence of February 9, 2023, Appellant, in collaboration with counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 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 § 278.6(a) states, in part:

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system...** [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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.

7 CFR § 278.6(i) states, in part:

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 CHARGES

FNS charged Arishree Food Mart LLC with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for June 2022 through November 2022. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

- **Charge Letter Attachment 1:** Multiple transactions made from the accounts of individual SNAP households within a set time period.

- **Charge Letter Attachment 2:** EBT transactions that were large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

- Appellant denies the trafficking allegations.
- Appellant is located in a town with a small population and a limited number of SNAP authorized stores.
- Customers find Appellant's location more convenient because of its proximity to schools and local churches, including a school where the store owner works.
- Sometimes customers, including different members of the same household, visit the store multiple times throughout the day.
- Some customers buy in bulk to lessen the number of shopping trips needed.
- Appellant has always followed every SNAP policy and rule.
- The store sold large frozen bags of chicken wings based on customer requests. The chicken was sold frozen for customers to prepare at home. The chicken bag sales were offered on a trial basis from June through November or December last year. These sales caused the transactions in the charge letter.
- Appellant ultimately stopped offering frozen bags of chicken wings because it was too much to handle.
- Appellant is one of only a couple of stores open on some holidays. As a result, customers visited the store on holidays and the days leading up to the holidays to stock up. This caused the higher SNAP dollar volume seen in some months.
- Appellant consistently buys breakfast sausage patties and cases of wings to offer hot food for their non-EBT customers. This is demonstrated by the screen prints provided.
- Appellant will still sell bags of frozen chicken if a customer has shown they need to stock food in advance for their families.
- The five-pound bags of frozen chicken from Hunt Brothers were sold for \$45.00. The 3.3-pound bags from Hackney were sold for \$30.00.
- Frozen chicken wings were not the only thing sold. Some customers wanted to buy frozen sausage patties, snacks, and drinks which totaled large dollar amounts, sometimes above \$100. However, buying these items helps customers limit the amount of money spent in a week, reduces the number of trips to the store for food, and allows customers to spend more time with their families.
- The store's owner is currently in school and has not communicated with the manager, her father, as often as needed.
- Appellant is now questioning whether it is worth re-applying for SNAP.

In support of its contentions, Appellant submitted a three-page sales summary for the store titled *2022 Sales Summary Star Food Mart A16268* and two pages of vendor webpage screenshots. The screenshots from Hackney show the prices and total retailer units purchased from December 26, 2021, through December 31, 2022, for sausage patties, BBQ wings, and Hot & Spicy Wingettes.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented and evidence submitted.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the December 19, 2022, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the December 5, 2022, store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the store size, description, and characteristics. The report also described the store's checkout counter space area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than one customer at a time.

At the time of the store visit, the highest priced SNAP-eligible food item identified by the contractor, in collaboration with store personnel, was Old Trapper Jerky, priced at \$17.99. The store reported it did not offer bulk or fresh meat sales. The store did not offer shopping carts or shopping baskets for customer use.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

SNAP Transaction Analysis

The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total 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 to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

Appellant contends the transactions on this attachment are due to the store's temporary sales of bags of frozen chicken. In support of this contention, Appellant submitted screen prints from a vendor showing the price per case of frozen chicken and sausage patties and the number of packages the store purchased from December 2021 through December 2022. However, based on Appellant's statements and the store visit photographs, these items are also used in the store's hot food sales to non-EBT customers. Appellant has provided no evidence to support what portion of those purchases were for sales to EBT customers and what portion of the chicken purchased was for the store's hot food sales.

Appellant stated the store stopped offering these sales in November or December 2022. At the time of the December 5, 2022, store visit, the store did not offer large frozen bags of chicken at these price points (\$45.00 for five lb. and \$30.00 for 3.3 lb. bags.) However, even if the store temporarily offered sales of large bags of chicken to SNAP customers, just two of the transactions in the charge letter matched the price points provided by Appellant.

Appellant has not provided any evidence, such as itemized receipts, to show that the charge letter transaction patterns resulted from frozen bags of chicken sales to SNAP customers. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant also stated that households visit the store multiple times a day because it is convenient, open on holidays, and near schools and churches. Again, while there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in the attachment indicate a series of purchases that total to large amounts. SNAP benefits are

intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. Anecdotal arguments offer little insight into the transactions in question and do not verify what took place between the customers and the store clerks at the point of sale.

Without compelling evidence from Appellant to show that the transactions in Attachment 1 were legitimate, this review finds that trafficking was a likely cause of the unusual patterns.

Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transactions in this charge letter attachment were all higher than 85% of all convenience store purchase transactions during the review period.

The store's inventory and characteristics did not support the frequency of the large transactions reflected in this charge letter attachment. At the time of the December 5, 2022, store visit 5 U.S.C. § 552 (b)(6), (b)(7)(C) & (b)(7)(E). Appellant's store has a small checkout area and does not offer shopping carts or hand baskets, making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Additionally, there is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items.

Despite these limitations, Appellant conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Neither the store visit nor Appellant's statements explain the unusual repeating transaction totals. Consequently, when transactions cluster in repeating large dollar totals without explanation, it appears that these amounts are contrived and, in the absence of compelling evidence to the contrary, are suggestive of trafficking.

In support of its contentions, Appellant provided a sales summary for 2022 which it stated shows increases in September through December for Hunt Brothers. Appellant attributed this increase to the store's sales of frozen chicken bags. The summary does not provide a level of detail that would allow FNS to evaluate what portion of this increase was for the store's SNAP eligible food sales or provide an explanation for the unusual transaction patterns listed in the charge letter.

In a case such as this one, which is based on an analysis of transaction data, Appellant must prove, through a preponderance of evidence, 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. In the absence of compelling information or documentation weighed in comparison to that provided by the Retailer Operations Division, the agency's determination must be sustained.

Comparison with Similarly Situated Stores:

The Retailer Operations Division compared Appellant's transaction activity to the transaction activity of three nearby convenience stores identified as carrying similar stock. Appellant had substantially more SNAP transactions meeting the parameters of multiple transactions from the same household in set time frames and transactions that were large based on the observed store characteristics and recorded food.

In addition, Appellant's average transaction was between 32% and 120% higher, for the same period, than the average transactions at the nearby comparable stores identified by the Retailer Operations Division as carrying similar stock.

Appellant's inventory, characteristics, and location do not explain why Appellant had more frequent transactions meeting the parameters in the charge letter and a notably higher average transaction as compared to nearby convenience stores. It would be expected that nearby stores offering similar stock would display similar patterns; however, that is not the case.

Household Analysis:

The Retailer Operations Division conducted a household analysis to determine if households conducting suspicious transactions at Appellant actually utilized larger stores during the review period. Larger stores usually have lower prices and better inventory.

The analysis included examples of six households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Each of the households examined had access to and regularly shopped at larger stores, including superstores and/or supermarkets, while conducting multiple suspicious transactions at Appellant, meeting the parameters in the charge letter.

Additional analysis of the households in the charge letter revealed 77% conducted a transaction at a large grocery, supermarket, or superstore within a day of a charge letter transaction at Appellant. This shows that the majority of households had access to transportation. However, despite this access to larger, better stocked stores, these sampled households conducted multiple transactions in set time frames and transactions that were large based on the observed store characteristics and recorded food at Arishree Food Mart LLC.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that Appellant was not eligible for a CMP in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The case record shows that Appellant did not request a trafficking CMP or provide any evidence of a compliance policy or training program within the required 10-day period.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Arishree Food Mart LLC from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by Appellant. Likewise, Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against Appellant, Arishree Food Mart LLC, under the ownership of Shriya Pareshkumar Patel, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

AMIE CHURCHILL
Administrative Review Officer

February 28, 2023