

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

Eddy Quick Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0254067

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 Eddy Quick Stop (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 Eddy Quick Stop.

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

Eddy Quick Stop was initially authorized to participate in SNAP on August 6, 2020. In a letter dated January 12, 2023, 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 October 2021 through March 2022 and information obtained during a visit to the store by an FNS contractor on December 31, 2021. 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 January 13, 2023, Appellant made an initial written response to the charge letter stating, in part, that the transactions in the charge letter were the result of one of the store's owners buying a second location. The owner processed SNAP transactions for that second location through Eddy Quick Stop until that second location became SNAP authorized.

Appellant provided a second written response to the Retailer Operations Division on January 23, 2023. Appellant stated it discovered the store had been extending credit to SNAP customers and claimed the credit extensions were another cause of the transaction activity in the charge letter.

In a letter dated February 1, 2023, received by Appellant on February 2, 2023, the Retailer Operations Division requested the submission of documentation to support Appellant's credit contention. Appellant was informed that it must submit this documentation within 10 calendar days of receipt of the February 1, 2023, letter. According to agency records, Appellant did not provide documentation, such as credit ledgers, recipient statements, or related supporting documentation, to the Retailer Operations Division to support its contention that credit was advanced in violation of the regulations.

On February 2, 2023, Appellant responded to the Retailer Operations Division's letter requesting documentation to support Appellant's credit contentions. Appellant stated that the owners were unaware the employee was extending credit to SNAP customers, and the employee had since been fired. The store no longer extends credit to SNAP customers.

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 February 16, 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 February 17, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In email correspondences dated February 27, 2023, and March 19, 2023, Appellant, through 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 § 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....

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 § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store....

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(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(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(e)(1)(i) states:

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

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(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 Eddy Quick Stop 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 October 2021 through March 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:** Transactions where the bulk of the households' remaining benefits were depleted within short time frames.
- **Charge Letter Attachment 3:** EBT transactions that were large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

Appellant's contentions regarding this matter are summarized as follows:

- Appellant has not violated any SNAP regulations.
- One of the owners of Eddy Quick Stop purchased another store in the summer of 2021. That second store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), sells meat packages priced between \$24.99 and \$124.99. Appellant processed large SNAP transactions for meat packages from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Eddy Quick Stop. Customers could either travel to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to pick up the meat package or Appellant would deliver the meat packages.
- Store employees have admitted to extending credit to some loyal and trustworthy customers from 2021 to 2022.
- Appellant has recovered some of the tracking papers for the credit extensions.
- Some of Appellant's customers rely on SNAP benefits. The store lets them take groceries on credit when they are out of benefits. The customers return to repay the store credit when they receive their monthly SNAP benefits.
- Most of the time, credit customers buy additional groceries when repaying the store what they owe.

- Losing SNAP authorization has caused a dramatic decrease in Appellant's sales.
- If the store lost the ability to accept SNAP, it would be a huge blow to the community as it is the only location within walking distance.

In support of its contentions, Appellant submitted approximately nine undated photographs of credit records.

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 January 12, 2023, 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 31, 2021, 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.

According to the contractor report and photographs from the store visit, the store had just four items priced at \$5.00 or more. The store did not utilize an unusual pricing structure, with the

majority of items ending in “x9” cents. The store visit also noted that the store did not offer any fresh meats, bundles/specials/packages, or offer discounts for bulk purchases. The store did not round transaction totals up or down at checkout or offer telephone orders or delivery. While there were no shopping carts, the store offered limited 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.

Credit

Appellant, in its response to the Retailer Operations Division and on review, stated some of the transactions in the charge letter were the result of Appellant extending credit to customers. In regard to this contention, the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a lesser one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f). When a retailer claims that credit accounts are a reason for the 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 accounts to obtain a lesser one-year disqualification penalty instead of permanent disqualification for trafficking.

Appellant provided approximately nine undated photographs of credit tickets. These nine photographs documented 21 total credit tickets/entries. Most tickets provided limited details about what was purchased, listing items like frozen, grocery, and chips. None of the tickets included a date upon which credit was extended or repaid. Of the 21 entries provided, just one total matched a transaction total from the charge letter. 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. Such proof should also correspond with the transactions identified in the charge letter. Appellant did not identify which transactions in the charge letter were the result of the firm’s credit program. The explanation provided by Appellant, without adequate supporting evidence, is insufficient for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

Unauthorized Acceptance

Appellant contends one of the owners purchased another store in 2021. While that store was undergoing the SNAP authorization process, Appellant processed transactions for that store at Eddy Quick Stop. Specifically, Appellant noted that the large dollar transaction activity at its store was caused by customers purchasing meat packages from that second store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and then picking up the meat packages from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or having them delivered.

Appellant did not provide any evidence to support this contention or specify which transactions from the charge letter were the result of transactions for the unauthorized store. It is unclear how

Appellant's customers would be aware of this option as the contractor report and photographs from the store visit did not reflect any fresh meats, meat bundle sales, or delivery. In addition, there did not appear to be any signage advertising these options. Unsubstantiated arguments such as this do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed. However, this review notes that even if Appellant had provided evidence to support this contention, the unauthorized acceptance of SNAP is a direct violation of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278.2 of Title 7 of the CFR. Specifically, 7 CFR § 278.2(a), which states that "an authorized retail food store may not accept coupons from another retail food store..."

SNAP Transaction Analysis

The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store, which are considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the 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)

Within this attachment, there were patterns of unusual transaction activity noted. The first pattern was multiple transaction sets that included identical totals. Three examples are included below. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Additionally, there was an unusual pattern of repeating transaction totals. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Clusters of transactions in large dollar values, without corresponding packages, bundles, or stock priced at those dollar values, is very unusual and likely indicative of trafficking.

Finally, within this attachment, there was an unusual pattern of repeating ending cents transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store visit completed at the firm reported that the firm utilized a typical pricing strategy, with most of the store prices ending with "x9" cents. When a disproportional amount of transactions end in the same cent value without a corresponding pricing strategy or other business practice to explain the recurring ending cents pattern, it appears that these transaction amounts are contrived and, therefore, are indicative of trafficking.

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 appear to 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.

As noted, Appellant contended it processed transactions for an unauthorized grocery store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), while waiting for that store to become SNAP authorized. Appellant stated 5 U.S.C. § 552 (b)(6) & (b)(7)(C) meat package sales, processed through Appellant's store, caused the unusual transaction activity in the charge letter. The Retailer Operations Division noted the meat packages available at that unauthorized store were priced at \$24.99, \$49.99, \$74.99, \$99.99, and \$124.99. Just three of the 306 transactions on this attachment totaled one of the unauthorized store's meat package prices. Appellant did not provide any evidence to support this contention; however, even if this were true, it does not appear to explain the majority of the transactions on this attachment. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contended the store provided extensions of credit to SNAP customers who had run out of their monthly benefit. When customers came in to repay their outstanding credit, they sometimes purchased additional items. This review notes that more than 82% of the transaction sets in this attachment were conducted in elapsed times over one hour. Based on the store size and available stock, it seems unlikely it would take customers more than an hour to purchase additional items when visiting Appellant to repay their outstanding credit. Appellant's credit contention was discussed in more detail above; however, even if this were true, none of the credit ticket totals matched a transaction on this attachment. Again, unsubstantiated arguments do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Agency records show that most customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant. Spending sizable portions of one's SNAP benefit allotment in a convenience store - when there are larger stores at which one also shops that carry more variety of foods likely at a lower cost - is unreasonable customer behavior. 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: Transactions where the bulk of the households' remaining benefits were depleted within short time frames. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Appellant contends its ownership purchased a second location in 2021. During the SNAP authorization application process for that location, Appellant ran transactions for the unauthorized store through Appellant's store. Appellant contends that the unauthorized location offered five meat packages priced between \$24.99 and \$124.99. Appellant argues these meat package sales caused the unusual transaction activity in the charge letter. Again, Appellant offered no evidence to support this contention. However, even if this were true, this review notes

that none of the transactions in Attachment 2 match the meat package prices for the second location.

The Retailer Operations Division compared Appellant to three stores offering similar stock within one mile. Appellant completed significantly more transactions where the bulk of the household's benefits were depleted within short time frames.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

As noted earlier, in an administrative review, the burden of proof lies with Appellant to prove by a preponderance of the evidence that the allegations are erroneous, and a reversal of the disqualification is warranted. Absent from Appellant's argument in this case is compelling evidence, such as itemized cash register receipts, to show that the specific transactions in question were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the patterns found in this attachment were likely the result of trafficking.

Charge Letter Attachment 3: 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).

Within this attachment, there was an unusual pattern of repeating transaction totals in high even-dollar amounts. Examples of the repeating transaction totals include 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, clusters of transactions in large and even-dollar values without corresponding packages, bundles, stock priced at those dollar values, or a pricing structure that would support those values is very unusual and likely indicative of trafficking.

Appellant's contentions regarding credit extensions and processing transactions for an unauthorized store are addressed elsewhere in this decision. However, this review notes that just one of the transactions on Attachment 3 matched a credit ticket provided by Appellant. In addition, while Appellant claims the meat packages offered by the unauthorized store were responsible for the large transactions at the store, just 11 of the 545 transactions on this attachment totaled to one of the advertised meat package prices. In sum, even if Appellant had provided sufficient evidence to support its contentions, these explanations do not appear likely to explain the unusual transaction patterns noted in the charge letter.

The store's documented inventory and characteristics did not support the frequency of large transactions reflected in this charge letter attachment. At the time of the store visit, Appellant carried just four items priced at \$5.00 or more. The highest priced items ranged between \$6.99 and \$15.99. The store had just two items priced at \$5.00 or more that had ten or more units in stock. Those items were Jacks Pizza for \$6.99 and Jacks Links Jerky priced at \$7.99. The transactions on this attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously noted, the transactions cited in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive. The transactions identified in the charge letter are not marginally abnormal, but decidedly so.

In a case such as this one, which is based on an analysis of transaction data, an 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.

Competitor Stores:

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed a supermarket, a medium grocery store, and five other convenience stores within the one-mile radius. This review demonstrates that households shopping at Appellant were nearby a larger store that may have lower prices and better inventory, making it less likely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's convenience store, and that they would do so recurrently.

Household Analysis:

In addition to determining if households had access to other shopping options, 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. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. As an example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Each of the households examined had access to and shopped at larger stores, including superstores and/or supermarkets.

Agency records show that nearly 74% of the households in the charge letter conducted a transaction at a large grocery, supermarket, or superstore within one 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, transactions where the bulk of the households' remaining benefits were depleted within short periods, and/or transactions that were large based on the observed store characteristics and recorded food at Eddy Quick Stop.

Comparison with Similarly Situated Convenience 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 in the charge letter.

Appellant's average transaction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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.

No Undue Hardship to SNAP Participants

Appellant asserts that disqualification would be a hardship to SNAP households who rely on the store. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the disqualification. Section 278.6(f)(1) of SNAP regulations provides for Civil Money Penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating retail food store in the area to meet their needs. However, this regulation also sets forth the following specific exception: "A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification." Because the matter at hand involves a permanent disqualification, this CMP provision is not applicable.

Civil Money Penalty (CMP)

As noted earlier, the Retailer Operations Division determined that Appellant firm 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 Eddy Quick Stop 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, Eddy Quick Stop, under the ownership of Harpreet Singh and Gurpreet Singh, 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

April 13, 2023