

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

**Lamirs Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0253361**

**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 Lamirs Market (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 August 11, 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 September 2021 through February 2022. 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).

USDA is an equal opportunity provider, employer and lender.

Appellant replied to the charger letter on August 25, 2022, and denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. After considering the retailer's response and the evidence, the Retailer Operations Division issued a determination letter dated September 22, 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 an October 2, 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 September 2021 through February 2022. 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 October 2, 2022, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant sells chicken wings, fish, ground beef patties, and shrimp in raw form.
- Appellant cooks these items at no cost.
- Appellant operates a “You Buy We Fry” because it is a great service to the community.
- The store visit occurred when the inventory was low.
- Customers complain because the owner will not sell ineligible items in exchange for SNAP.
- Jeopardizing its SNAP authorization would be economic self-destruction.

In supports of its contentions, Appellant provided the following:

- Employee Compliance Agreement.
- Raw and Frozen Menu.
- Photos of food.
- Category Sales Comparison.
- Processing Detail Report form October 2022.
- Detailed Sales by Product report from September 1, 2021, through September 29, 2022.

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 Lamirs Market as a convenience store on May 28, 2020. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 9, 2022, 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 1430 square feet with about 275 square feet of storage outside of public view.
- The checkout counter was small with limited space to place items.
- There were some shopping baskets but no shopping carts for customer use.
- There was one cash register and one point of sale (POS) device.
- There was an optical scanner.
- There was no fresh unprocessed meat, poultry, or fish.

- There were packages of hot dogs and bacon.
- Dairy included milk, cheese, butter, margarine, and cheese.
- The only fresh produce was a one lemon, a few tomatoes, potatoes, and some avocados.
- Other staple foods available for purchase were eggs, juice, rice, tortillas, beans, 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 and kitchen prep area.
- Ineligible items included lottery, tobacco, paper goods, cleaning products, paper goods, 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 a case of CORE water - \$15.99; case of apple juice - \$14.99; case of Snapple - \$13.99; bag of rice - \$8.99; beef jerky - \$6.99; and bacon - \$6.77. 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 67 sets of transactions that total \$8,677.35 in SNAP benefits that meet the parameters of this scan. On December 18, 2021, one household conducted two SNAP transactions at Appellant totaling \$266.75 (transactions #60-#61). Between November 9 and November 10, 2021, another household conducted six SNAP transactions at Appellant (three of them even dollar transactions) that total \$315.81 (transactions #136-#141). Similarly, between December 8 and December 10, 2021, another household transacted a total of \$239.08 at Appellant (transactions #142-#143). 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 submitted a more than 2,000-page list of the items purchased during transactions. The items listed are mostly hot food items which are ineligible to purchase with SNAP items. Appellant contends that it sells the items raw and uncooked; however, there was no evidence to support that. Moreover, it remains questionable whether these hot food items were actually purchased with SNAP benefits or the items were just rung into the register as such to artificially document higher transaction totals. The list of transactions is questionable. For example, on December 21, 2021, one household transacted \$41.97 at Appellant and then six minutes later transacted \$104.92. According to the transaction report sent in by Appellant, the first transaction was for two hot wing meals at \$13.99 each and an order of fish and chips at \$13.99 to total the \$41.97. Then the next transaction conducted six minutes later was for three hot wings meals, two burger meals, a shrimp and fry, two fish and fries, two more hot wings meals, and an unknown food item for \$6.99. This is highly irregular and it unlikely.

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 1,325 transactions as large as \$256.87, and that total \$81,765.56. Appellant's total SNAP dollar redemption value during the review period was 72% greater than the average for convenience stores in Clark County. Appellant's average SNAP transaction amount was 170% greater than the average SNAP transaction amount convenience stores in Clark County during the review period. The substantial number of high-dollar transactions in a six-month period call into question the legitimacy of these transactions.

Appellant explained that the transactions are reasonable because the store sells meat and fish raw and then prepares it for families. During both store visits there was no evidence that supports that Appellant sold fresh raw meat or fish. On the day of the store visit, the store manager confirmed the highest priced items with the store visit contractor and none of these items included fresh meat or fish items. Thus, 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.

Appellant submitted photos to show its food stock that was alleged to have not been captured at the time of the store. The photos show some packages of beef and chicken. However, as the photos were taken after the store visit, it is more likely that these photos were taken to respond to the charge letter.

Appellant did submit five invoices to the Retailer Operations Division. Only two of the invoices were for the review period. The invoices do show that the store offers fish, chicken, and beef. However, the invoices did not support the store's SNAP redemptions.

Appellant also submitted a price list to the Retailer Operations Division for catfish, chicken wings, ground beef patties and red snapper. However, these prices do not match the prices listed on the

large menu hung in the store at the time of the store visit.

The Retailer Operations Division compared Appellant to two nearby similarly stocked convenience stores. Appellant's average SNAP transaction amount was 225% and 190% greater than the other two stores. Appellant's total SNAP redemption dollar value was 147% and 45% greater than the other two stores during the review period. The Retailer Operations Division also determined that Appellant conducted more larger dollar SNAP transactions in each dollar range between \$50.00 and \$129.99 than the comparison stores. For example, Appellant conducted 278 SNAP transactions in the \$50.00 - \$59.99 dollar range whereas the other two stores conducted ten and 32 transactions in this range. The comparison stores conducted no SNAP transactions in the \$120.00-\$129.99-dollar range, whereas Appellant 18 SNAP transactions in this range. The data from these nearby stores also show that the transaction patterns at the Appellant firm were unusual. Moreover, if these flagged sets of transactions could be explained by household shopping patterns for this local area, then similar shopping patterns would be seen at the other two local comparable stores. However, this was not the case.

Store	Attachment 1 Pattern	Attachment 2 Pattern
Appellant	67	1,325
Store #1	2	43
Store #2	11	154

Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that 43 other convenience stores within a two-mile radius of Appellant including four supermarkets and two super stores.

The Retailer Operations Division reviewed the transaction history of five households that conducted some of the questionable flagged transactions. Each of the five 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. The Retailer Operations Division also determined that these household s conducted flagged transactions mostly and sometimes only at Appellant.

## **Evidence**

In support of its contentions, Appellant submitted inventory invoices/receipts to the Retailer Operations Division. The invoices were not sufficient evidence that the firm carried sufficient stock to satisfy the SNAP redemptions. However, even with sufficient food stock purchased at Appellant to mathematically support high dollar transactions, the frequent repeated large dollar transactions and large dollar transactions conducted at a convenience store while these households shopped at larger stores with greater inventory are still questionable.

Appellant submitted a 2,000 plus large report of its transactions for a 12-month period. The report listed items purchased during each of the store's transactions. The report was curios as almost exclusively large dollar transactions or purchase prices were for SNAP transactions and not with

the other forms of payment. Also, SNAP customers, again almost exclusively purchased items priced \$13.99 at a much higher percentage than other payment sources. Moreover, as mentioned previously the \$13.99 price for crawfish and other dines did not match the price on the menu board of the price advertised online. Also there were some larger items listed such as \$69.95 as “unknown food” and \$79.80 as “refrigerated food.”. It was peculiar that this report started in the middle of December and left off the four largest transactions on Charge Letter Attachment 2.

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 insufficient 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.

### **Appellant Hardship**

Appellant contends that a permanent disqualification is a hardship to the business. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment based on possible economic hardship to the firm resulting from imposition of such penalty. To excuse ownership 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 a firm’s economic hardship 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. Therefore, Appellant’s contention that the firm will incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposition.

### **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.]



With its administrative review request, Appellant requested a CMP and provided a copy of its employee contract. In the charge letter, the Retailer Operations Division informed Appellant that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division's action. Moreover, the timeframe for providing this documentation cannot be extended. However, even if the Appellant had submitted this documentation timely, it would likely still have been eligible for a trafficking CMP because the information submitted is insufficient.

In conclusion, 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 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

April 20, 2023