

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

**Manito Food Center Corp,**

**Appellant,**

**v.**

**Case Number: C0257435**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Manito Food Center Corp (hereinafter “Manito Food Center Corp” or “Appellant”) by the Retailer Operations Division of FNS. Therefore, the determination is reversed.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Manito Food Center Corp.

**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**

In a letter dated December 5, 2022, the Retailer Operations Division informed the Appellant that Manito Food Center Corp was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on December 6, 2022.

In a response to the Retailer Operations Division of December 14, 2022, the Appellant, through counsel, responded to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

The record reflects that in a letter dated December 14, 2022 and received by FNS on January 27, 2023, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Manito Food Center Corp pursuant to the Freedom of Information Act (FOIA). A response to counsel's FOIA request is pending.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated February 2, 2023, informing the Appellant that Manito Food Center Corp was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In an email correspondence of February 8, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated February 16, 2023.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation 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(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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 § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added].

(iii) 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 penalty. [Emphasis added].

## **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from February 2022 through July 2022. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

### **ANALYSIS AND FINDINGS**

A review of the evidence does not support the Retailer Operations Division's determination in this case. Accordingly, it is unnecessary to address the Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by the Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against Manito Food Center Corp from participating as an authorized retailer in the SNAP is reversed.

### **RELEASE OF INFORMATION**

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

April 20, 2023