

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

**Mini Mart Smoke Shop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0254157**

**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 Mini Mart Smoke Shop (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 June 13, 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 July 2021 through March 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 June 20, 2022, and submitted inventory invoices to support its SNAP redemptions. After considering the retailer's response and the evidence, the Retailer Operations Division issued a determination letter dated June 27, 2022. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By a July 5, 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 July 2021 through March 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 bulk of the households’ remaining benefits were depleted within short time frames.
- The store conducted EBT transactions that were large based on the observed store characteristic and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

## **APPELLANT'S CONTENTIONS**

In its July 5, 2022, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant is selling items at 60 percent profit.
- Appellant attached purchase invoices and receipts in support of the business.
- As a small business, Appellant tried to have the shop be a one stop for the homeless and low-income who struggle with transportation to the bigger stores.
- The disqualification is affecting its business.
- Moving forward Appellant will make sure any new hire even family members will have training.
- Appellant has never participated in fraud and would not harm the business for its customers.
- The owner was not aware of the transactions that that its staff that were not trained.
- Appellant requests another chance.

In supports of its contentions, Appellant provided 70 invoices and receipts as well as nine customer letters.

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 Mini Mart Smoke Shop as a convenience store on February 2, 2021. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 21, 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 2400 square feet.
- The checkout counter was small with limited space to place items.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and two point of sale (POS) device.
- There was an optical scanner.
- There was no fresh unprocessed meat, poultry, or fish.
- The only dairy staple food items were milk and margarine.
- The was no fresh produce.

- Other staple foods available for purchase were juice, rice, cereal, 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 are many ineligible items including clothing, 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 beef jerky- \$14.99; Nescafe coffee - \$9.99; avocado oil - \$7.99; case of soda - \$6.99; Lipton Tea - \$5.99; and milk - \$5.49. The store visit report shows that the store lacked sufficient staple food items to meet authorization criteria for SNAP. 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 20 sets of transactions that total \$5,552.08 in SNAP benefits that meet the parameters of this scan. On December November 12, 2021, one household conducted three SNAP transactions at Appellant totaling \$321.33 (transactions #18-#20). On March 4, 2022, another household conducted two SNAP transactions at Appellant that total \$515.15 (transactions #10-#11). Similarly, between December 6 and December 8, 201, another household transacted a total of \$552.24 at Appellant (transactions #39-#40). 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 explains that many of its customers are homeless and low-income and do not have access to transportation to other stores. The Retailer Operations Division determined that 40% of

the households that conducted the transaction listed on this Attachment conducted a SNAP transaction at a supermarket or super store within one day of its flagged transaction at Appellant and 60% of the households conducted transactions at other stores within two days of its flagged transaction at Appellant. Moreover, only one of the 15 households that conducted the transactions sets conducted any such transaction sets at other stores that they shopped. There does not appear to be an explanation for SNAP households would spend large portions of their monthly allotments at Appellant, particularly when they have access to larger, better stocked stores.

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: In a series of transactions, the bulk of SNAP households' remaining benefits were depleted within short time frames.** This attachment lists 48 sets of SNAP transactions totaling \$7,612.52.

A government report on SNAP shopping patterns<sup>1</sup> indicates that on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefit. By the first week, the average household had redeemed over half of its benefit, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance. Therefore, transactions in which SNAP benefits are exhausted in one or a few transactions during a short period of time are suggestive of trafficking.

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends most of its allotment at one store in a short period of time or in a single transaction. It strains credulity that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at Appellant: a convenience store.

Appellant did not submit sufficient evidence that the transactions conducted on the Attachment were for eligible food items only.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 165 transactions as large as \$401.12, and that total \$24,915.64. Of the 165 SNAP transactions listed 70% are between \$100.00 and \$401.12. Appellant's average SNAP transaction amount was 79% greater than the average SNAP transaction amount convenience stores in Sacramento 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.

On the day of the store visit, Appellant's highest priced item was beef jerky for \$14.99. Appellant

---

<sup>1</sup> Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.

did not sell any fresh meat, poultry, or fish or fresh produce. In fact, Appellant did not stock sufficient staple food items in three of the four staple food categories to meet SNAP authorization criteria. Appellant did not have any shopping baskets or carts.

The Retailer Operations Division compared Appellant to three nearby convenience stores. Appellant's average SNAP transaction amount was between 158% and 187% greater than the other three stores. Appellant also conducted between 47% and 83% less SNAP transactions than the other three stores. So Appellant was visited less frequently by SNAP recipients yet SNAP recipients spent more per transaction at Appellant. This is unusual. The Retailer Operations Division also determined that Appellant conducted more larger dollar SNAP transactions in each ten-dollar range between \$50.00 and \$409.99 than the comparison stores. The data from these nearby stores also show that the transaction patterns at the Appellant firm were unusual.

Store	Attachment 1 Pattern	Attachment 2 Pattern	Attachment 3 Pattern
Appellant	20	48	165
Store #1	5	0	37
Store #2	0	0	10
Store #3	1	0	13

Appellant explains that there are many homeless and low-income households that do not have access to transportation. It is true that 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 38 other convenience stores within a one -mile radius of Appellant including four super stores. The Retailer Operations Division determined that there were 58 households that conducted these flagged large dollar transactions. Of the 58, 38 household conducted a transaction at supermarket or super store withing on day of its flagged transections at Appellant. Thus, the majority of these households had access to larger authorized stores during the same time period as its questionable transactions at Appellant.

The Retailer Operations Division reviewed the transaction history of seven households that conducted some of the questionable flagged transactions. Each of the households conducted a flagged transaction at Appellant within one day of visiting a supermarket, super store, or large grocery store. For example, on October 25, 2021, Household #1 transacted an even #239.00 at Appellant and the following day transacted \$181.48 at a super store. Similarly, on November 5, 2021, Household #3 transacted \$270.46 at Appellant via two separate transactions and on November 7, 2021, transacted only \$120.00 at a super store. Lastly, Household #4 transacted \$250.25 at Appellant on October 9, 2021, and on that same day purchased \$267.70 in SNAP at a super 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.

## Invoices

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.

## **Evidence**

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring. Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered 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**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed 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. Appellant did not timely request a CMP in lieu of a permanent disqualification.

SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit



documentation and evidence of its eligibility **within the 10 days** specified in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.] Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations.

## **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 24, 2023