

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

**PB Grocery,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0247278**

**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 PB Grocery (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 July 20, 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 May 2021 through October 2021. 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).

Appellant, through counsel, replied to the charge letter on August 30, 2022. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated November 1, 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.

In a letter dated November 1, 2022, Appellant, through counsel, 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 May 2021 through October 2021. 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 November 1, 2022, administrative review request, and subsequent correspondence submitted on November 23, 2022, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- The store visit report missed some higher priced items such as formula - \$22.99; sweet bologna - \$8.00 per pound; coffee- \$7.99, and milk -\$5.99.
- An analysis of the submitted store's invoices, show that the store had at least \$100,000 worth of inventory.
- The population structure and potential patronage is impacted by high density low-income housing in the surrounding area; several multifamily housing units; the Lancaster County Assistance Office a short distance away; and the e several schools in the surrounding area.
- Shopping is a rewarding experience and individuals that enjoy it will repeat it.
- Counsel requests that the shopping activity of all households that conducted a Charge Letter Attachment 1 be reviewed to determine if they conducted similar sets at other stores that they shopped.
- Co-shopping is on the rise, where both adults are responsible for the groceries. This is manifested in the SNAP participants that shop at Appellant in the following ways: different household members will shop separately (using the same account) to pick up different needs, and personal needs, on top of the household's list; and different household participants will travel to the Store together to make purchases, and then separate their purchases to track what amount each party has used from their benefits account.
- Households shop multiple times a day because of convenience, often sending their children on separate shopping trips to pick up items from time to time.
- Households make purchases for friends, for large gatherings, or to satisfy needs.
- Limited mobility resources is another reason for the transactions.
- The transactions are not the result of trafficking but instead the result of the Appellant's business operations, business environment, SNAP household demographics and shopping habits, and Appellant's inventory.
- The inventory offered by the store is of such a variety that it is reasonable to assume a household could satisfy all their needs on a single shopping trip.
- To satiate boredom, unemployed household members will regularly shops to find something to do.
- The transactions listed in Attachment 1 are innocent transactions explained by either (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; (3) the participant making a purchase, returning home, and then returning to Appellant to make a second purchase; or (4) a reflection of the normal shopping habits of SNAP participants.
- The households conducting the large transactions likely have a larger amount of SNAP household members.
- Because Appellant is so much closer to the SNAP participants and their inventory contains such a wide variety of items, these transactions are more likely to occur.
- Appellant's inventory exceeds those around it.

- The transactions are not trafficking and are supported by the substantial inventory and are reasonably explained by co-shopping, Appellant's pricing structure, and the reliance on Appellant as a primary grocery.

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 PB Grocery as a convenience store on March 24, 2010. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 11, 2021, 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 600 square feet.
- There were no shopping baskets and no shopping carts for customer use.
- There was one cash register and one point of sale (POS) device.
- There was no optical scanner.
- The checkout area was small with limited space to place items and surrounded by a Plexiglas display case with an ice cream cooler in front.
- Dairy included milk, cheese, sour cream, butter, and margarine.
- There was limited fresh produce including avocados, onions, plantains, tomatoes, lemons, limes, oranges, bananas, and potatoes.
- There was no fresh unprocessed meat.
- There were a few packages of hot dogs and a couple of packages of deli meat.
- Other staple foods available for purchase were juice, eggs, bread, cereal, pasta, and a limited selection of canned goods.
- Frozen food included sandwiches, pizza, shrimp, and some pasta items.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- Ineligible items included tobacco, paper goods, cleaning products, and health and beauty aids.
- There was a menu of prepared sandwiches and a kitchen prep area.

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 frozen shrimp - \$7.49; subs - \$7.00; deli meat - \$5.00-\$7.00 per pound; and cheese - \$6.00 per pound. 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 81 sets of transactions conducted by 18 households that meet the parameters of this scan. One household conducted eight larger than average SNAP transactions within a short period that total \$310.27 in SNAP benefits between September 24 and September 26, 2021 (transactions #202-209). Between June 20 and June 21, 2022, another household transacted \$244.38 via six SNAP transactions at Appellant (transactions #174-#178). Between September 22 and September 24, 2021, another household transacted \$303.90 at Appellant that total \$303.90 (transactions #232-#235). 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.

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 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, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of forgotten items.

Counsel explains that co-shopping results in a higher number of transactions that occur in a shorter period than expected. Co-shopping may occur, but it is unlikely the reason that Appellant has more frequent large transactions by the same household than other similar stores during the review period. This would manifest itself in these households conducting similar transaction patterns at other retailers. Counsel request that the information be reviewed to see if these households conducted similar transaction sets at other stores that it shopped. There were 18 households that conducted the transactions listed on this Attachment. Each of the households shopped at other authorized stores during the review period; however, only one of the households conducted similar transaction sets at another store that is shopped.

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 355 SNAP transactions as large as \$151.47 and that

total \$20,125.21. The Retailer Operations Division also compared Appellant to the average for convenience stores in the Lancaster County. Appellant conducted 169% more SNAP transactions than the average for convenience store during the review period. Appellant total SNAP redemption dollar volume was 178% greater than the average for convenience stores in the County. Appellant had no fresh meat, limited fresh produce, and no shopping baskets or carts. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors.

Counsel reports that the notes from the store visit show the store to be sufficiently stocked to satisfy the transactions. This is not accurate. The store visit report simply indicated that the store met the eligibility criteria for SNAP authorization. It stocked with at least three stocking units of three different varieties in each of the four staple food categories. The store visit report does not indicate anywhere that the store stocked sufficient food to account for the questions SNAP transactions. Considering Appellant's offering of eligible food stock, these large dollar transactions are questionable and likely indicative of trafficking.

The Retailer Operations Division compared Appellant to three similarly stocked convenience stores. Appellant's average SNAP transaction was between 12% and 17% greater than the other two stores. Appellant conducted between 53% and 115% more SNAP transactions than the other three stores. Appellant's total purchase dollar volume was between 71% and 151% greater than the other three stores. In addition, Appellant conducted more SNAP transactions in each ten-dollar range between \$40.00 -\$99.99. The Retailer Operations Division also determined that the transaction patterns of Appellant exceeded the other stores, as seen on the table herein. The data from this nearby store shows that the transaction patterns at the Appellant firm were unusual.

Store	Attachment 1 Pattern	Attachment 2 Pattern
Appellant	81	463
Store #1	13	124
Store #2	5	107
Store #3	21	234

Counsel contends that transportation inconsistency is another reason why the store's transactions appear the way they do if transportation to other stores is not dependable. Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. The Retailer Operations Division determined that within a two-mile radius, there are least 20 other authorized firms.

The Retailer Operations Division reviewed the transaction activity of seven households that conducted some of the flagged transactions. Each of these households conducted SNAP transactions at a super store or supermarket within one day of its flagged transaction at Appellant. The evidence supports that these households had access to transportation within a short time frame of their unusual large transactions at Appellant. 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.

## Invoices

Appellant, through counsel, submitted invoices with its reply to the charge letter. The Retailer Operations Division reviewed the invoices and determined that with a reasonable markup the invoices did not justify its SNAP redemptions for the review period in addition to its cash and credit transactions. 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 ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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 based on 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.]

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 this case.



## 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.] 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. 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 25, 2023