

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

**Stanton Supermarket,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0245683**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is insufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Stanton Supermarket (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). Therefore, the determination is reversed.

**ISSUE**

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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**

By letter dated August 12, 2021, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in December 2020 through March 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 the 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, requested and was approved for an extension of time to respond to the charges until September 22, 2021. The FNS approval letter did state that the time to request a CMP could not be extended. Appellant, through counsel, responded to the charges in a letter dated September 22, 2021, that did include a request for a CMP. The Office of Retailer Operations and Compliance notified Appellant by letter dated January 27, 2022, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated January 27, 2022, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. Subsequent correspondence consisting of a brief dated February 24, 2022, and several exhibits was submitted by counsel via email.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

### **CONTROLLING LAW**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) 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 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."

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." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: "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.”

7 CFR §278.6(b)(2)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

### **ANALYSIS AND FINDINGS**

A review of the evidence does not support the Office of Retailer Operations and Compliance’s determination in this case. Accordingly, it is unnecessary to address 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 Appellant and the Office of Retailer Operations and Compliance. 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 Office of Retailer Operations and Compliance to impose a permanent disqualification against Stanton Supermarket from participating as an authorized retailer in SNAP is reversed.

### **RIGHTS AND REMEDIES**

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.

ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

October 7, 2022