

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

**Tio Minimarket & Deli Corp.,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0253148**

**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 Tio Minimarket & Deli Corp. (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 18, 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 August 2021 through January 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, through counsel, replied to the charger letter on August 1, 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 August 3, 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 August 11, 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 August 2021 through January 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 majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- 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 August 11, 2022, administrative review request, and subsequent correspondence email on September 16, 2022, Appellant, through counsel provided the following summarized contentions, in relevant part:

- The claim that the store has trafficked is unsubstantiated.
- The reasoning for the larger than average charges stem from the local customers trust and confidence in the store to help them feed their families at a reasonable price, as well as the lack of other SNAP establishments in the neighborhood.
- As the attached video shows, most of the products sold at the store is SNAP eligible.
- Appellant has established and implemented an effective compliance policy and program to prevent violations of the SNAP program.
- Appellant only has three employees and each of them received and maintain paperwork from the USDA regarding facts and eligibility items for the SNAP program.
- Each employee is aware of the items that can be purchased using EBT and they follow the rules.
- Appellant is a community store that provides the local families with a friendly and reliable way to purchase their groceries at a reasonable price.
- Appellant has not violated regulations.

In support of its contentions, Appellant submitted the following:

- Statements from owner and store manager.
- SNAP policy memos related to retailers.
- August 3, 2022, determination letter.
- Video of food inventory.
- 18 photos of cash register and food stock.
- Sixteen pages of invoices dated after the review period.
- Account summary from supplier for January 2022 thru September 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 Tio Minimarket & Deli Corp. as a small grocery on August 8, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 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 1800 square feet with about 40 square feet of storage outside of public view.
- 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 one point of sale (POS) device.
- There was no optical scanner.
- There was no fresh unprocessed meat, poultry, or fish.
- There was a deli section with meats and cheese.
- There were bulk bags of rice
- Dairy included milk, cheese, yogurt, butter, margarine, and infant formula.
- Fresh produce included bananas, potatoes, onions, squash, lettuce, celery, apples, oranges, a few pineapples, cucumbers, and some containers of grapes,
- Other staple foods available for purchase were eggs, juice, bread, 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.
- Ineligible items included alcohol 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 two gallons of oil -\$34.00; 35-pound bag of rice - \$28.00; tomato paste- \$11.99; Nescafe - \$7.99; ice cream - \$5.99; and cereal- \$5.00. 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 83 sets of transactions conducted by 40 households that total \$11,468.22 in SNAP benefits that meet the parameters of this scan. On November 18 and November 19, 2021, one household conducted two SNAP transactions at Appellant totaling \$444.50 (transactions #145-146). Similarly, on December 19, and December 20, 2021, another household conducted two SNAP transaction at Appellant that total an even \$209.00 (transactions #175- #176). On October 7, 2021, and October 8, 2021, a different household conducted four larger than average SNAP totaling \$273.10 (transactions #186- #189).

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 store manager explained that many customers will pick something up in the morning and then again later in the date or will check out and realize they forgot something. This may be true. However, 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 has not offered sufficient evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

**Charge Letter Attachment 2: The majority or all of individual recipient benefits were exhausted in unusually short periods of time.** This attachment lists 24 SNAP transactions sets conducted by 11 households totaling \$3,505.41.

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.

Appellant did not present any valid explanations or documentation that legitimizes these transactions.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 353 transactions as large as \$339.50, and that total \$28,720.72. Appellant's total SNAP dollar volume was 62% greater than the average for small groceries in Kings 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.

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<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.

The store visit supported that Appellant was a small grocery with no fresh meat, poultry, or fish. The checkout area was a small counter space upon which it would be difficult to place many items for purchase. There were no shopping baskets or shopping carts to handle large purchases of food items. 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.

Given that the Appellant firm stocks some larger priced items including large bags of rice as well as other SNAP eligible items, including cold deli sandwiches, snacks, and drinks, it is likely that there were instances during the review period where transaction amounts at Appellant were high, perhaps exceeding \$70.00 or \$80.00. As such, there are likely some legitimate SNAP transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors.

Appellant explains that there were many errors in the store visit report and submitted photos in support of its contentions. The photos were not much different than what is contained in the case record.

The Retailer Operations Division compared Appellant to three nearby similarly stocked small groceries. Appellant's average SNAP transaction amount, total transaction count, and total SNAP redemption dollar value were much greater than the other three stores during the review period. 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 three local comparable stores. However, this was not the case.

Store	Attachment 1 Pattern	Attachment 2 Pattern	Attachment 3 Pattern
Appellant	83	24	353
Store #1	18	8	123
Store #2	1	1	26
Store #3	2	2	89

Appellant explains that the flagged transactions can be explained by the lack of other SNAP establishments in the neighborhood. 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 66 other small groceries within a one-mile radius of Appellant as well as six supermarkets and three super stores.

The Retailer Operations Division reviewed the transaction history of seven households that conducted some of the questionable flagged transactions. Each of the three households conducted a flagged transaction at Appellant within one day of visiting a supermarket, super store, or large grocery store. For example, on September 2, 2021, Household #1 transacted \$15.04 at a supermarket and then transacted \$294.28 at Appellant. Similarly, Household #2 transacted an even \$76.00 at Appellant on August 2, 2021, and then visited a super store and spends just \$11.28. Lastly, on October 8, 2021, Household #3 visits two different supermarkets and spends \$20.42 and \$63.68 in SNAP and then transacts \$168.35 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.

### **Invoice Analysis**

In support of its contentions, Appellant submitted inventory invoices/receipts. All of the invoices were dated after the review period. Thus, 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.

### **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 submitted copies of SNAP policy memos and clarifications. Appellant also contends that it has established and implemented an effective compliance policy and program to prevent violations of the SNAP program. 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. Appellant did not submit any information in support of its training program within the required time frame.



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 4, 2023