

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

Hill Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247251

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 Hill Mart (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 August 27, 2021, 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 December 2020 through May 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).

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Appellant replied to the charges by fax on September 7, 2021. Appellant, through counsel, 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 September 24, 2021. 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 October 5, 2021, 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 December 2020 through May 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 October 5, 2021, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Supplemental clarifying evidence regarding the establishment and implementation of an effective compliance program is being produced.
- Monthly discussions with employees as to the necessity of absolute compliance have been consistently held to prevent and recognize potential SNAP violations.
- Appellant contests and denies the trafficking inferences.
- Multiple transactions are clearly an expected ordinary part of business when over 95% of the stores sales come from residents of the two housing projects immediately adjacent to the market.
- Customers visit the store frequently and their spending patterns reflect that.
- The charge letter is devoid of any evidentiary substance.
- Appellant has been authorized since 2005 and would like to continue.
- Appellant requests reconsideration that a CMP be imposed in lieu of a permanent disqualification.

In support of its contentions, Appellant provided information regarding the SNAP rules that have been posted by Appellant the register for employees.

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 Hill Mart as a convenience store on March 3, 2005. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 18, 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 1000 square feet, with additional storage of mostly beverages.
- 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.
- There was no fresh meat, poultry, or fish.
- Dairy included milk, cheese, butter, yogurt, and sour cream

- There was no fresh produce.
- The only frozen item was ice cream.
- Other staple foods available for purchase were juice, eggs, bread, 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.
- Ineligible items included lottery, tobacco, cleaning products, paper products, 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 on the day of the store visit was a four pack of Red Bull - \$8.99; beef jerky - \$7.99; 12 pack of soda - \$6.99; coffee - \$6.99 and \$5.99, and a pint of ice cream - \$5.99. 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 93 sets of transactions conducted by 44 households that total \$11,139.41 in SNAP benefits that meet the parameters of this scan. 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.

Appellant explains that it is located next to two apartment complexes and its residents visit the store multiple times per day. 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.

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 1,055 transactions as large as \$155.67, and that total \$51,868.38. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. Appellant had no shopping baskets or shopping carts. Appellant had no fresh meat or produce. Considering Appellant's offering of eligible food stock, these large dollar transactions are questionable and likely indicative of trafficking.

Appellant conducted 280% more SNAP transactions than the average for convenience stores in Newport County. Similarly, Appellant's total SNAP redemption dollar value was almost 600% greater than the average for convenience stores in the County during the review period. Appellant's average SNAP transaction amount was 82% greater than the average for convenience stores in the County during the review period.

The Retailer Operations Division also determined that Appellant conducted more larger dollar SNAP transactions between \$35.00 and \$155.99 than the average for convenience stores in Newport County. For example, Appellant conducted 371 SNAP transactions in the \$40.00 - \$49.99 range and the average for convenience store in the County was 27 SNAP transactions. Similarly, Appellant conducted 206 SNAP transactions in the \$50.00 - \$59.99 dollar range whereas the average for convenience stores in the County was 12.

The Retailer Operations Division compared Appellant to two nearby convenience stores with similar inventory and stock and determined that Appellant's transaction patterns exceeded the other stores. The data from these nearby stores show that the transaction patterns at the Appellant firm were unusual and likely indicative of possible trafficking violations.

Store	Attachment 1 Pattern	Attachment 2 Pattern
Appellant	93	1,055
Store #1	0	39
Store #2	1	41

Sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. Within a 0.25-mile radius, there are two super stores. The Retailer Operations Division reviewed the transaction activity of three 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. For example, between April 1 and April 8, 2021, Household #2 transacted \$424.78 in SNAP benefits at Appellant while transacting in a total of \$157.46 SNAP benefits during three SNAP transactions conducted at two different super stores. Similarly, between January 24, 2021, and January 29, 2021, Household #3 transacted a total of \$349.64 at Appellant while transacting \$161.00 at a super store via two separate SNAP transactions. 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 selection of fresh meat and produce and likely better prices.

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 no 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

In the charge letter, Retailer Operations 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 10 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. The criteria for a trafficking civil money penalty in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, *inter alia*:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations”

In its September 6, 2021, reply to the Retailer Operations Division, Appellant requested a CMP and explained the firm has an established and implemented compliance policy since it was initially authorized. Appellant, through counsel, explained that it posted compliance protocol and requirements near the register for employees. The Retailer Operations Division determined that the request was timely; however, it was not eligible for a CMP because there was insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program prior to the SNAP violations in this case. For example, there were no documentary evidence showing what the alleged SNAP training consisted of when it was provided to its employees. The determination by the Retailer Operation Division that the Appellant did not meet the standards for a trafficking CMP under 7 CFR §278.6(i) is sustained.

With its administrative review request, Appellant provided the documents that are hung near the register for the employees to review regarding SNAP compliance and requested that its request for a CMP be reconsidered. 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 request, it would likely still have been eligible for a trafficking CMP because the information submitted is insufficient. For example, there were no training logs, training agendas, signed training certificates, or any other documentary evidence showing that SNAP training was provided to its employees.

Thus, the determination by the Retailer Operations Division that Appellant did not meet the standards for a trafficking CMP under 7 CFR §278.6(i) is sustained.

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 owners reside or are 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

March 24, 2022