

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

**Wilmer E. Placencia dba  
W & W Grocery Store,  
Appellant,**

**V.**

**Retailer Operations Division,  
Respondent.**

**Case Number: C0244168**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Wilmer E. Placencia dba W & W Grocery Store, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated May 6, 2021.

**AUTHORITY**

7 U.S.C. § 2023 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**

By charge letter dated April 1, 2021, Retailer Operations Division informed ownership that Appellant was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 271 – § 278, based on EBT benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The charge letter stated, in relevant part, that “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.”

In correspondence dated April 22, 2021, Appellant, through counsel, responded to the charge letter and submitted a Freedom of Information Act (FOIA) request. Appellant, through counsel,

stated that it denies the allegations set forth in the charge letter, i.e., that trafficking took place at the business, and in order to preserve his rights under Section 278.6 of the Supplemental Nutrition Assistance Program regulations, we hereby request a civil money penalty in lieu of permanent disqualification. In support of this request, my client avers that his disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. My client avers that pursuant to Section 278.6(i) he has an effective compliance program.

On April 29, 2021, Counsel was informed that FOIA requests were to be officially submitted through the FOIA office. The record does not reflect that a FOIA request was submitted or processed. SNAP regulations state, in relevant part, “278.6 (p) Freedom of Information Act (FOIA) requests and appeals. A FOIA request or appeal for records shall not delay or prohibit FNS from making a determination regarding disqualification or penalty against a firm under paragraphs (c) and (d) of this section or delay the effective date of a disqualification or penalty listed in paragraph (e) of this section.”.

Retailer Operations Division gave consideration to the Appellant’s reply, through counsel, and evidence of the case, and issued a determination letter dated May 6, 2021. This letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated May 10, 2021, Appellant, through counsel, appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. 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 actions should be reversed. That means an 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 & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence*. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) ...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

### **SUMMARY OF CHARGES**

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six-month period of July 2020 through December 2020. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

The first 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**

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. Attachment 1: My client cannot prevent an individual from using his/her benefits at any time of his/her choosing or in the manner of his/her choosing. SNAP regulations do not prohibit recipients from making multiple withdraws during a single day.

2. My client's store is very close to their household's residences, is well stocked with food items and it is inconvenient for them to travel to other slightly lower priced stores.
3. At times one member of the family will lend their account to another member of the family which results in multiple short-term withdrawals.
4. Attachment 2: My client's store is a large store and is well stocked with substantial variety of quality goods that in some cases are relatively expensive.
5. The pricing structure in a small grocery store is very different from the pricing in a very large supermarket. The small grocery store's business model requires a substantial mark-up on its inventory in order to justify the investment in the store.
6. A factual predicate for a finding of trafficking does not exist and a permanent disqualification is both unwarranted and in violation of the regulations and case law.

In support of its position during the review process, Appellant, through counsel, provided a copy of the store visit checklist for the store's stock. No other documentation was provided during this review.

The preceding may represent a brief summary of Appellant's contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

## **ANALYSIS AND FINDINGS**

The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a June 14, 2020, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale and encased in Plexi-glass.
- Estimated to be approximately 600 square feet.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- Food is stored in an area outside of public view that is approximately 600 square feet in size (non-staple foods).
- Store has storage freezers or coolers, but no food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables.

- Store takes telephone orders and does offers delivery
- Highest priced eligible food items were Similac (\$19.99), Enfamil (\$19.99), Canilla Rice (\$7.99), Goya Rice (\$8.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, health and beauty aids, cleaning products, and paper products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry, and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned or packaged. No fresh meat or seafood.
- A small kitchen/prepared food area.
- No hot foods sold but food sold for onsite consumption with a microwave available for customer use.
- A deli or prepared food section. Stock is used in preparation of food. No pricing posted for sandwiches or other prepared food items.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The second issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge letter – Multiple transactions were made from the accounts of individual SNAP households within a set time-period.**

During the review period there were 50 sets of 119 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

No invoices were submitted to validate that items are sold and replenished frequently or to corroborate Appellant's claim, through counsel, that the store has a high mark-up value. It is noted that outside of Appellant's statements, through counsel, regarding the shopping habits of its SNAP customers, no evidence has been submitted to support these statements. Appellant, through counsel, contends that all of these transactions are the result of the store's business practices, inventory, customers allowing household members to utilize their SNAP benefits and other habits of the SNAP clientele. With regard to these contentions, the record reflects that many of Appellant's statements, through counsel, in regard to the causation of the SNAP transactions cited in the charge letter, were not corroborated with evidence to the same that specifically speak to Appellant's transaction patterns during the review period.

As contentions cited included a variety of reasons such as the presence of a low income population on SNAP residing near the retailer, absence of local SNAP retailers to compete with the Appellant's store, significant inventory that encourages multiple shopping trips, lack of transportation for local SNAP households, forgotten items; counsel did not provide evidence or

address specifically which of these potential explanations apply to Appellant as it is unlikely that all of the alleged explanations apply to the transaction patterns or the SNAP transactions cited in this Attachment.

Appellant, through counsel, did not provide any additional documentation to support its various claims to justify the SNAP transactions cited in this Attachment. Based on the analysis above and Appellant's failure to adequately show that all of the transaction sets were as a result of legitimate SNAP purchases, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transaction patterns cited in Attachment 1 evidence trafficking as the most likely explanation.

**Attachment 2 of the Charge letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.**

There were 212 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low-priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. The record reflects that Appellant SNAP transactions are higher than 85 percent of the average SNAP transactions for all small grocery stores in New Haven County, Connecticut. The record reflects that Appellant's SNAP dollar volume is 235 percent higher than the average dollar volume of other small grocery stores in the county.

Transactions in this attachment range from \$44.99 to \$138.49 and although transactions at the lower amounts may be sustainable, it is questionable that transactions at the higher amounts were legitimate SNAP transactions. No evidence was provided to justify the SNAP transactions as cited in the charge letter. There were no noted bundles or high-priced food items that would reasonably explain these repeating high dollar transaction totals. It must be noted that SNAP household have no limits on the number of times they may use their EBT cards or how much eligible food they may purchase. The EBT transactions 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 the store's stock and facilities and are indicative of trafficking.

The record reflects that there are at least 32 SNAP authorized retailers within one mile of Appellant's store including supermarkets, superstores, medium grocery stores, additional small grocery stores and a number of convenience stores. Retailer Operations also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the New Haven County area of Connecticut. This is another strong trafficking indicator.

## Case Law Citations

It is important to note that this administrative review is based on the specific circumstances of this case as documented by materials provided by Appellant and the Office of Retailer Operations and Compliance. This administrative review decision does not establish policy or supersede federal law or regulations, it is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations and agency policy promulgated under the act. Therefore, any application or reference to a supposed judicial precedent would best be addressed in a judicial review.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership 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. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence of invoices of food in inventory to cover Appellant's reasoning for the SNAP transaction totals for the review months, the lack proof and/or explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other small grocery stores in the County and State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division' adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deemed pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

### **CIVIL MONEY PENALTY**

The 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 dated April 1, 2021. 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. Therefore, the Retailer Operations Division' decision, not to impose a trafficking CMP in lieu of disqualification, is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

Retailer Operations Division' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Wilmer E. Placencia dba W & W Grocery Store, from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking 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, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Wilmer E. Placencia dba W & W Grocery Store, is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you 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 (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

January 10, 2022