

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

Zip Market,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0244270

FINAL AGENCY DECISION

The record supports that Zip Market (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA, that there is sufficient evidence to support the permanent disqualification of Appellant from participation as a SNAP authorized retail food store, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations 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 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated April 30, 2021, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. Based on this information, the firm was charged with trafficking. The sanction for trafficking is permanent disqualification. The owner provided replies to the Charge letter in writing and by telephone.

Retailer Operations issued a Determination letter dated July 21, 2021. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c), and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted to demonstrate that the firm had established and implemented a SNAP compliance policy and program to prevent violations.

The owner requested administrative review by letter dated July 26, 2021. The review was granted by letter dated August 18, 2021.

STANDARD OF REVIEW

In an appeal of an adverse action, 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 credible, relevant evidence, which 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 not true.

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 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 CFR § 278.6(e)(1) states: "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, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers, 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 § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.2(f) states: "SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP for a period of one year."

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(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).”

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.”

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transaction patterns were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of November 2020 through January 2021. The patterns indicative of trafficking are:

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

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented and submissions, including any not referenced.

- Zip Market is a neighborhood stores in a low income/poor neighborhood. They have had regular customers for years and people know them on a first name basis.
- During the winter months when businesses were closed due to COVID-19, the customers that knew Shahzad started getting groceries on credit and opening tabs with the store. They said that once their food stamps came in they would pay the full amount or at least half.
- Before they knew it multiple people used this method of payment and most of them paid off the tab within a week or two weeks.
- Many did not show up to pay their tabs so the owner told Shahzad that they need to end this method of payment in which customers opened tabs.
- The owner provided photos and a folder in which they keep records of the customers. He knew credit was not good for business but was not aware that it was a violation of regulations. He requests to provide customer affidavits
- She hopes this explains and satisfies the concern for the payment they received.
- I am not at all happy and agree with the decision. I have provided whatever I could.

- Most of our customers are on food stamps and we have been giving them credit until their food stamps come which we did not know was a “VIOLATION.” We did it out of goodwill. We stopped that.

ANALYSIS AND FINDINGS

The regulations at 7 CFR § 278.6(a) state 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, and that 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 presented a case that Appellant trafficked 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 during the review period. The owner has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument they assert is more likely to be true than not true.

Attachment 1: Listed are 204 transactions in 81 sets, conducted by households within a set time period.

Attachment 2: Listed are 386 transactions in amounts that are large based on the observed store characteristics and recorded food stock.

The regulations allow that a firm that commits violations of accepting payment for items sold to a household(s) on credit shall be disqualified from participation in the SNAP for a period of one year, and may incur fiscal claims for extending violative credit. The owner admitted that credit was advanced to beneficiaries, in violation of the SNAP regulations. Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A retailer that claims credit accounts for charged Attachment patterns must provide credible evidence to support that credit accounts existed at the time the irregular EBT transactions occurred. Such evidence may include an accounts receivable ledger which lists the names of credit recipients, SNAP ID information, credit recipient address information, the items acquired on credit, and the dates and amounts of the transactions the retailer claims were credit. If the retailer does not provide sufficient evidence of credit documentation to support the claim of credit, the retailer shall be permanently disqualified for trafficking.

Retailer Operations determined that the owner provided insufficient credit evidence to support that the transaction patterns were more the result of violative credit than the charged trafficking. The credit evidence advanced consists of a manila folder with approximately 35 small Post-it notes that have handwritten amounts and first or last names or nicknames with some figures, presumably dollar amounts but no \$ signs are seen, and no dates or indication of what was allegedly purchased. There was also a photo of Post-it notes stuck around the checkout area. In the absence of identifying information, the recipient names could not be matched to SNAP transaction data to determine if the claimed credit was for the purchase of legitimate eligible foods during the review period.

The owner also submitted 13 client testimonials. Retailer Operations searched the State Terminal for all the names provided by the retailer to determine if the households shopped at Appellant during the review period. Retailer Operations identified transactions for 12 of the 13 households. A review of the transactions completed at Appellant by the households matched indicate that there were 29 total transactions listed on Attachment 2 which may be credit transactions, however it is not known if these transactions were for eligible foods.

Based on the insufficiency of the credit information advanced, and the small number of transactions identified to affiants in one Attachment, just 7.5%, Retailer Operations determined that the statements did not provide a preponderance of evidence that the irregular data patterns are more the result of credit than the charged trafficking.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is also available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain the SNAP rules.
- Information that the store owner is responsible for carefully reviewing the program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet
- From the "SNAP EBT Dos and Don'ts card (FNS-136, included in the authorization package) "Do not accept SNAP benefits (EBT) as payment on credit accounts."
- From the SNAP Training Guide for Retailers: "SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of credit accounts. You may not hold customers' SNAP EBT cards or card account information at your store for future use."

Thus, the owner was provided multiple and redundant resources through which a thorough knowledge of SNAP rules and requirements could be obtained. By signing the certification to become a SNAP retailer, the owner confirmed understanding of, and agreement to abide by the rules and regulatory provisions of the Program. These include violations such as accepting SNAP benefits as payment on credit accounts or loans, and trafficking. The certification is clear that violations of Program rules can result in administrative sanctions such as fines and/or disqualification from the SNAP.

Upon review, the responding owner has not provided a preponderance of evidence to support that credit more accounted for the Attachment patterns than did trafficking. As such, Retailer Operations properly permanently disqualified Appellant.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. Retailer Operations denied a trafficking CMP as the retailer did not submit any documentation to support such a request.

Upon review, it is determined that the retailer failed to submit substantial evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. The CMP was properly denied.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store report, household shopping analyses, and other data that provided evidence consistent with trafficking violations in SNAP benefits. Based on the entirety of the record, the preponderance of the evidence supports that violations did occur at Appellant as charged by Retailer Operations.

Retailer Operations' denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. This decision is effective thirty (30) days from its delivery to Appellant.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to the applicable rights to judicial review of this decision. If 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 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 delivery 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

September 10, 2021