

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

4 Seasons Finest Deli Corp,

Appellant,

v.

Case Number: C0204229

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of 4 Seasons Finest Deli Corp as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against 4 Seasons Finest Deli Corp.

AUTHORITY

7 U.S.C. § 2023 and its 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 December 7, 2017, the Retailer Operations Division charged the 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 April 2017 through September 2017. The letter noted that the penalty for

trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered to the Appellant via UPS on December 8, 2017.

The Appellant initially responded to the charge letter during a telephone call with the Retailer Operations Division on December 11, 2017. During the call, the Appellant stated that he did not know where the transactions above 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were coming from. The Appellant requested additional time to respond to the charge letter. The Retailer Operations Division granted an extension to December 29, 2017, but noted that an extension of time to request a trafficking CMP could not be extended.

The Appellant submitted a notarized statement dated December 12, 2017, in response to the charge letter. The Appellant affirmed that all of the store's SNAP transactions are in accordance to SNAP rules and regulations. The Appellant further stated that the store is located within a working class neighborhood where most residents have SNAP benefits. In regards to transactions occurring more than once a day, the Appellant stated that its customers choose to purchase large quantities of food but do not carry it all at one time. Lastly, the Appellant provided 665 purchase invoices, 108 daily settlement reports and 45 pages of bank statements in support of its contentions. The Appellant did not request a trafficking CMP in lieu of a permanent disqualification.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 16, 2018. The determination letter informed the Appellant 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 the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the 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 postmarked January 22, 2018, the Appellant requested an administrative review of the permanent disqualification decision. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 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 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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.

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 § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

7 CFR § 278.6(a) states, in part:

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(i) states, in part:

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) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through September 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from

individual benefit accounts in unusually short time frames. This attachment lists 19 sets of 48 transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. The largest single transaction set reached a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 234 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction amounts ranged up to a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The store has not committed any SNAP violations and has been running a legitimate business for three (3) years serving low income families 24 hours a day.
- 70 percent of the store’s business comes from servicing SNAP recipients in the community and, if a CMP is denied, the store will likely go out of business.
- Pictures of the store shows how it operates to regulatory codes. The documentation shows that the store was misrepresented during an inspection.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized 4 Seasons Finest Deli Corp for the SNAP on February 24, 2016. The owner signed the SNAP application for the store on October 8, 2015 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP

benefits in exchange for ineligible non-food items or as repayments on credit accounts.

During the review period of April 2017 through September 2017, the Retailer Operations Division classified the store as a convenience store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 6, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- 4 Seasons Finest Deli Corp is approximately 525 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- The store did not have any large bulk foods for sale. The store did not sell fresh meat bundles, seafood specials, and/or large fresh fruit and fresh vegetable boxes.
- The store had a kitchen, deli and prepared food section with hot foods, prepared salads and prepared made-to-order sandwiches. Store stock was used in making these prepared foods.
- Store personnel confirmed that there was no food stored outside of view in a storage area or stored offsite.
- There were some sparsely filled shelves in the store. There were also dusty cans and ice crystals on frozen food which indicates that there was not a large turnover of these items.
- The interior checkout area consisted of a countertop surrounded by plastic shelving containing products for sale. The available counter space for stacking purchases was no more than two (2) feet by two (2) feet. There was also a large reach-in cooler in front of the checkout counter. The store also had a very small exterior night window for conducting transactions after 1:00 am. The limited space at both the interior checkout and night window made it not conducive to conducting large transactions.

The store's staple food inventory was limited and mostly consisted of inexpensive canned and packaged goods. The store sold deli meats and cheese by the pound, but these products were also used in making prepared food which is not eligible for purchase with SNAP benefits. The store also sold accessory food items such as snack foods, chips, candy, carbonated sodas, coffee, tea, condiments, and spices.

The SNAP ineligible items sold by the store included tobacco products, mobile phone accessories, automotive products, health and beauty products, paper goods, cleaning products, general houseware, gift items, party goods, and souvenirs. The store also offered a money transfer service.

Store personnel confirmed that the most expensive food items sold by the store was Enfamil at \$19.99 per can; pastrami at \$9.99 per pound; buffalo chicken breast at \$8.69 per pound; and honey maple turkey breast at \$7.99 per pound. The store photos supplied by the Appellant with its administrative review request are not significantly different from the store contractor photos. There is some evidence that the owner bought a few more products after the charge letter to fill empty shelves, but there is no support for the Appellant's claim that the store was "misrepresented" during the store visit. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. 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 a convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 1 lists 19 sets of 48 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a convenience store with a limited supply of staple food stock would have suspicious SNAP transactions greater than a supermarket or superstore.

5 U.S.C. § 552 (b)(7)(E).

The Appellant in its reply to the charge letter stated that its customers choose to purchase large quantities of food but not carry it all at one time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Even after splitting purchases, it is unlikely that customers would be able to carry all the food purchased. Also, the store has no shopping carts or hand held shopping baskets so it is unlikely that customers would be able to transport food around the store.

The store visit pictures show that is unlikely that SNAP customers would shop at this store multiple times during a short time frame, or purchase such a large volume of items due to the limited selection of food. In addition, the store's two checkout areas had very limited counter space making them unsuitable for conducting large

transactions. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). 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 a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 234 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

During the initial telephone call with the Retailer Operations Division, the Appellant stated that he did not know where the transactions above **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** were coming from. As noted above, there is no indication from the store visit report and pictures that the store sells food in bulk or has a sufficient amount of staple food to support the large transactions cited in the charge letter. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the firm trafficking in SNAP benefits.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that agency mapping systems document that within a half-mile radius of 4 Seasons Finest Deli Corp there are 83 comparable or larger SNAP authorized stores. These nearby stores included four (4) supermarkets and two (2) superstores. A government report¹ on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

convenience store with a limited selection of staple foods like 4 Seasons Finest Deli Corp.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four (4) households identified in the charge letter to analyze their shopping patterns at 4 Seasons Finest Deli Corp compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions, including repeating transactions, at 4 Seasons Finest Deli Corp on the same day or within a day or two of shopping at supermarkets and superstores. Under these circumstances, it is highly unlikely that a convenience store with limited staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Documents Supplied by the Appellant

The Appellant provided a large amount of daily settlement receipts, purchase invoices, bank statements, and EBT register receipts in support of its contentions. A review of the case record reveals that the Retailer Operations Division conducted a thorough review of this information. The daily settlement receipts were outside the review period and do not reveal what was purchased at the store, only the number of transactions and payment methods. The bank statements covered the period of May 2017 through December 2017 but do not show what was purchased during the transactions cited in the charge letter. Both the settlement reports and bank statements do not provide any probative value to the Appellant's contentions.

Regarding the purchase invoices, the Retailer Operations Division determined that 235 of the 665 invoices submitted were outside the review period. The Appellant curiously did not provide any purchase invoices from July 2017. Several invoices had varying addresses or store names listed. As the invoices for April and May 2017 appeared to be the most complete, the Retailer Operations Division compared this information to the SNAP redemptions conducted during those same months. Using figures supplied by the Appellant, the Retailer Operations Division determined that the store likely had enough food purchases to support its SNAP redemptions for

April and May 2017. However, even if the store had a sufficient food inventory to support its SNAP redemptions for those months, it would not explain the irregular SNAP transactions cited in the charge letter. Violating firms often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the store trafficking in SNAP benefits.

The Appellant also provided 685 different EBT register tapes dating between December 2017 and January 2018. Although these were outside the review period and do not show what was purchased, the Retailer Operations Division examined these receipts and determined that the majority of the SNAP transactions were for low dollar amounts, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

No Prior Violations

The Appellant states it has operated the store for three (3) years without any prior violations. Regarding this contention, trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification. Therefore, the Appellant's contentions do not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Hardship to Store

The Appellant states that a permanent disqualification of 4 Seasons Finest Deli Corp will likely cause the store to go out of business. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow store owners to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations.

Therefore, Appellant's contention that the firm may incur economic hardship based on the assessment of a permanent disqualification does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

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. 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."

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'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 the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against 4 Seasons Finest Deli Corp, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

April 5, 2018