

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

**A & A Quick Stop,**

**Appellant,**

**v.**

**Case Number: C0205800**

**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 A & A Quick Stop 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 A & A Quick Stop.

**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 February 21, 2018, 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 July 2017 through December 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 via UPS on February 23, 2018.

The Appellant responded to the charges in a letter dated March 2, 2018. The Appellant denied the trafficking charges and stated that the transactions cited in the charge letter were due to the store's popularity with the community. The store allegedly supports local youth and teen athletics along with making donations to the community which accounts for the community making purchases at the store. The Appellant also stated that sometimes a customer will make a special order for particular food items which are then purchased with SNAP benefits. The Appellant did not specify what items composed those alleged special orders. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated March 15, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 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). 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 March 21, 2018, the Appellant requested an administrative review of the Retailer Operation Division's determination. 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 July 2017 through December 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple consecutive purchase transactions were made too rapidly to be credible. This attachment lists eight (8) pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits in which consecutive transactions were conducted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 20 sets of 47 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 3:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 170 SNAP transactions

## **APPELLANT'S CONTENTIONS**

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

- A & A Quick Stop has sufficient evidence that can be submitted for review which will clarify and depict the actual sales based on purchases and sales records versus comparisons.
- This evidence consists of purchase invoices from March 5-9, 2018 and a spreadsheet estimating monthly food purchases compared to food sales after markup.

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 A & A Quick Stop for the SNAP on January 16, 2013. During the review period of July 2017 through December 2017, the Retailer Operations Division classified the store as a convenience store.

An owner signed the application for the store on December 12, 2012 and acknowledged that the owners were aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owners 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 as repayment on credit accounts or for ineligible non-food items.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 24, 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:

- A & A Quick Stop is approximately 1,000 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had two (2) cash registers for grocery purchases and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- Store personnel confirmed that there was a storage area of approximately 304 square feet outside of public view. This storage area contained mostly carbonated and non- carbonated drinks. There was also a cooler containing alcoholic beverages.
- The store did not sell any expensive food items or items in bulk such as fresh meat bundles, fresh seafood specials, or large boxes of fresh produce.
- The checkout area consisted of a countertop crowded with mostly non-food products for sale with two (2) empty spaces of no more than two (2) feet by two (2) feet in size for stacking items to be purchased. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible staple food stocked by the store consisted mainly of a limited selection of inexpensive canned and packaged dry goods including luncheon meat. The store also sold low cost accessory food items such as snack foods, carbonated drinks, coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol, gasoline, mobile phone accessories, automotive products, health and beauty products, paper goods, cleaning products, gift items, and clothing and gifts. The store also sold SNAP ineligible hot food such as nachos, hot links, boudin, and hot dogs. Store personnel confirmed that there were only three (3) food items more expensive than \$5.00. These were a 32 count pack of Dasani water at \$7.99, a four (4) pack carton of Red Bull at \$7.99, and 12 pack of Coke at \$5.99. All other food items sold for under \$5.00.

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 made too Rapidly to be Credible**

Charge Letter Attachment 1 lists eight (8) pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The second transaction in each set was a large dollar transaction which greatly exceeded the average SNAP transaction at a

convenience store in Louisiana during the review period. Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator. As noted above, the store did not have an optical scanner or conveyor belts at the checkout. The Appellant offered no explanation for these irregular transactions.

The store visit showed that the store has two (2) check out registers and one (1) point of sale device. Although this would normally allow two transactions to be conducted within a short period of time, five (5) of the eight (8) transactions pairs were conducted by the same household. In addition, in each of the five (5) sets involving the same household, the second transaction within the set is a high dollar transaction atypical of a SNAP authorized Louisiana convenience store. In four (4) of these pairs, the second transaction was much larger than the first. Therefore, these patterns would not be due to the household purchasing a second item that it had forgotten accidentally during the first purchase.

The average SNAP transaction for a convenience store in Evangeline Parish, Louisiana during the review period was \$11.91. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases in such a short time frame. The fact that the store did not have an optical scanner would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

Despite the store's limitations in counter space, infrastructure and technology, it was rapidly processing consecutive SNAP transactions which included an excessively large transaction atypical of a SNAP authorized convenience store in Louisiana. The Appellant offered no explanation of how it could conduct such rapid and consecutive transactions. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 1 are more likely than not the result of trafficking in SNAP benefits.

### **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.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** In fact, this average SNAP transaction is much larger than the average supermarket or superstore SNAP transaction in Louisiana during the review period. It is not credible that a convenience store with limited staple foods would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

One particularly egregious set is shown in in transactions 17-18.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or handheld shopping baskets for transporting food within the store. 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 3 cites 170 SNAP transactions

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The Appellant claims that its food inventory and purchase invoices supports these excessively large transactions; however, the store visit pictures show that the store's food inventory is consistent with those of a SNAP authorized convenience store and would not justify transactions exceeding those of a SNAP authorized supermarket or superstore in Evangeline Parish during the review period. 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.



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, agency mapping systems show that during the review period there were 19 SNAP authorized stores located within a two-mile radius of A & A Quick Stop. Among these SNAP authorized stores were larger stores including two (2) medium grocery stores, a large grocery store, a supermarket and a superstore. The superstore was located only 0.78 miles from A & A Quick Stop. A government report<sup>1</sup> 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 convenience store with a very limited selection of staple foods.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at A & A Quick Stop compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at larger stores including supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at A & A Quick Stop on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a convenience store would have legitimate SNAP transactions comparable or larger than these SNAP authorized large grocery stores, 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 scarcity of shopping carts and shopping baskets 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 3 are more likely than not the result of trafficking in SNAP benefits.

### **Purchase Invoice Analysis**

The Appellant submitted purchase invoices dating from March 5, 2018 through March 9, 2018 in an effort to show that A & A Quick Stop maintained a sufficient food inventory to support its monthly SNAP redemptions. However, the Appellant did not submit any additional invoices to show it makes the same purchases on a weekly basis and therefore the Appellant's claim regarding monthly sales could not

---

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

be verified. These purchase invoices also date from after the review period of July 2017 through December 2017 and therefore cannot be used to explain the irregular transactions that occurred during the review period. The purchase invoices that were submitted appear to support the store visit report in that they mostly show the purchase of inexpensive **accessory** food items such as soda, candy, chips, snacks, and ice cream. The invoices show that a much smaller amount of **staple** foods were purchased consisting primarily of milk, bread, sausages and cheese. These staple food purchases also likely include food that was used by the store for its SNAP ineligible hot food sales.

Lastly, even if the store had a sufficient food inventory to match its SNAP redemptions this would still not explain the irregular transaction patterns cited in the charge letter. It is not unusual for a violating store to conduct largely legitimate transactions while trafficking with a few trusted households. In these cases, a store would have sufficient food inventory but still be liable for conducting trafficking violations.

### **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. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, 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 ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

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 A & A Quick Stop, 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

June 4, 2018