

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

**Aihua Dong dba C & F Convenience
Store,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0199517

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Aihua Dong dba C & F Convenience 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 July 6, 2017.

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

In a letter dated May 18, 2017, 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 October 2016 through March 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that 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 Appellant replied to the charges by letter dated May 26, 2017, and generally stated that it knew its actions were unacceptable, but EBT is the only income and ownership had children to support. Most of the customers are from the homeless shelter and some don't have a job so they live on food stamps. Times when they have no benefits they beg to pay next week or month and out of kindness I let them owe me. My store is a small store so I don't have receipts to prove my point. Appellant also stated that, at times, customers buy large amounts of food and snacks and there are times when customers ask to check the amounts they have on their card then purchase large amounts of food. Appellant asked that the agency forgive its ignorance and give a second chance to correct its mistakes. In additional correspondence dated May 28, 2017, ownership's daughter responded to the charge letter in support of Appellant's response.

In correspondence dated June 5, 2017, Retailer Operations Division informed Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from participation for a period of one year. Appellant was requested to provide documentation to support that food items were purchased on credit as noted in its response to the charge letter. The documentation must identify specific accounts along with corresponding dates and amounts and be provided, to Retailer Operations Division, within 10 calendar days of receipt of the credit account letter.

In correspondence dated June 14, 2017, Appellant responded to the request for proof of credit accounts and generally stated that as customers owe money, ownership would write two copies on paper but once they are fully paid, the paper would be thrown out.

Customers were asked to provide receipts but either did not cooperate or the receipts were thrown out. Appellant also stated that it knew that its actions were unacceptable, but EBT is the only income it had to support the children and asked for a second chance.

Retailer Operations Division issued a Determination letter dated July 6, 2017. The 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 July 13, 2017, Appellant appealed the Retailer Operations Division' 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...*" (*Emphasis added*)

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 THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of October 2016 through March 2017. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple purchase transactions were made too rapidly to be credible.
2. Multiple transactions were made from individual benefit accounts in usually short time frames.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

APPELLANT’S CONTENTIONS

The Appellant 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:

- When I received the charge letter I didn’t receive any warnings about the actions that took place in my store before.
- Due to my ignorance, I didn’t know my actions were illegal. I didn’t review the manual and SNAP regulations carefully so it resulted in what happened.
- My daughter has been reviewing the regulations with me and translating it into Mandarin for me to better understand.
- I have a large amount of EBT customers due to the homeless shelter a

streetaway. If I don't have EBT it will not only affect me but it will also be very inconvenient for the customers who live in the homeless shelter.

Appellant provided a letter, from ownership's daughter on the store's behalf, and a petition for the store to keep SNAP signed by 41 of its alleged SNAP customers. 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 FNS authorized the business as a combination/other grocery store on July 22, 2014. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during an April 15, 2017, 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. A small counter area partially obstructed by other smaller items available for sale. POS device is located behind Plexiglas with a small opening.
- No shopping baskets or carts available for customers.
- No adding machines but optical scanners are available at checkout.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- Hot foods sold for take-out but not for onsite consumption.
- A deli or prepared food section available.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Estimated to be 250 square feet with no food stored in storage area out of public view or off-site.
- Operates through a night window or plastic barrier with food stock behind the barrier.
- Store is not a delivery route, farmers' market or specialty food store primarily selling one food type such as meat, poultry, seafood, bread, fruit or vegetables.
- Store stocks a significant amount of non-food items such as but not limited to household products, personal hygiene products, tobacco products, alcohol, lottery tickets, cleaning supplies, and automotive products.
- Store stocks minimal amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish

- products.
- Deficient in the dairy products and meats, poultry, fish categories.
 - Menu board advertising the sale of breakfast items, sandwiches and hoagies, sides and beverages.

The 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 the Appellant firm 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 too rapidly to be credible.

This attachment lists 28 sets of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. Retailer Operations considered this to be a strong indicator because the second purchase of items would have to be transported to the limited counter area without shopping carts, keyed at the register, a card swiped, a pin entered, and approval indicated and a receipt printed. Additionally the counter area does not appear have a sufficient amount of space in which to conduct these rapid transactions.

Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 1 of the charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

During the review period, this attachment lists 76 sets of 160 transactions, conducted by 47 different household, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Additionally, the store visit report and photographs document that the Appellant firm was deficient in dairy products and the meat/poultry/fish categories. This is not consistent with the Appellants claims of offering food on credit and customers purchasing large amounts of food and snack items. In fact, the store

visit report tends to indicate that the firm may not have been eligible to maintain SNAP authorization on the day of the store visit.

Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 2 of the charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits

Attachment 3 – The majority or all of individual recipient benefits were exhausted in unusually short periods of time.

This attachment lists 21 sets of 43 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Studies of historical transaction data shows that SNAP recipients do not normally exhaust their benefits in one or two transactions on the same day. A government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or in a single day. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP benefit households.

Attachment 4 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

This attachment lists 211 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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 any fresh or frozen meats or produce, no food in bulk or any ethnic or specialty foods that sell for a high price. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The average combination/other grocery store transactions in Pennsylvania during the review period were \$24.96 in the state and \$24.11 in Philadelphia County. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011

Appellant's layout and inventory do not support a high percentage of transactions markedly exceeding the average transaction amount or total SNAP redemption amounts for this store type. Moreover, as previously stated, the Appellant firm was deficient in dairy products and the meat/poultry/fish categories which indicates that the firm may not have been eligible to maintain SNAP authorization on the day of the store visit.

The record reflects that there are at least 88 SNAP authorized retailers within one mile of Appellant's store including 29 combination/other stores, 26 convenience stores, five large grocery stores, eight medium grocery stores 16 small grocery stores, two supermarkets and two super stores where household also shopped. Retailer Operations conducted an analysis of the shopping habits of six of the households identified in the charge letter.

This analysis concluded that these households shopped at other larger 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. Based on the household's shopping patterns, transportation did not appear to be an issue. However, despite this access to large supermarkets and superstores, these households consistently conducted questionable transactions at the Appellant firm. This is another strong trafficking indicator.

Credit

The Appellant contends that the charge letter transactions are due to the store giving credit to customers who could not afford food. With regard to this contention, SNAP regulations at § 278.2(f) provides, inter alia, that: "Food stamp 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 Food Stamp Program for a period of one year".

Since attributing suspicious EBT transactions to credit may be an attempt to avoid a more serious sanction which is appropriate for a trafficking violation indicated by the available evidence, to refute charges of trafficking, as part of the retailer's reply to the charge letter, the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred. It is imperative that the retailer provide evidence to refute charges of trafficking so that the Retailer Operations Division can compare such proof with the transactions outlined in the charge letter. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

The determining office shall compare the credit information provided by the retailer against the transactions outlined in the letter of charges and the recipient personal identifying information available from the State EBT administrative terminals. The retailer shall be assessed a fiscal claim for each transaction determined to be a credit account violation. If the retailer is not able to account for all of the suspicious EBT transactions for which it has been charged, the determining office must evaluate the remaining transactions and determine whether trafficking has occurred. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

The record reflects that Retailer Operations Division presented Appellant with an opportunity to provide documentation and any information, explanation or evidence in support of its claim that the transactions were as a result of credit accounts. Appellant was notified that the documentation must identify specific accounts along with corresponding dates and amounts to qualify as adequate proof of credit accounts.

Appellant failed to provide any evidence that the transactions cited in the charge letter are as a result of credit accounts. Therefore, Appellant's contention that the transactions were due to customers paying off credit accounts does not constitute valid grounds for dismissal of the current charges or for mitigating the impact of those charges.

While there are legitimate reasons why a SNAP recipient might return to a combination/other grocery store during a short period of time to make SNAP purchases, it is implausible that households that rely on SNAP benefits to make ends meet would make multiple large purchases at a Appellant's store with no fresh or frozen meat, no produce and where the stock consisted mainly of inexpensive snack and individually prepared items.

More importantly, based on the store visit documentation, Appellant appeared to be ineligible to maintain its SNAP authorization as it was found deficient in the dairy products and the meat, poultry or fish categories.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case,

ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

Contentions

Appellant contends that when it received the charge letter it did not receive any warning about the actions that took place in the store. With regard to this contention, the regulatory citation at 7 CFR § 278.6(d)(2),(3) which states, in part: “The FNS ...office making a disqualification or penalty determination ... shall consider:... (2) any prior action by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm’s intent to violate the regulations...” requires FNS to consider any prior warnings and evidence of a firm’s intent to violate when determining a sanction. It does not require FNS to give such warnings prior to assessing a sanction. FNS did not consider prior actions to warn Appellant about the possibility that violations were occurring because there were no prior warnings. The evidence considered by Retailer Operations included the computer data of questionable SNAP transactions in four identified patterns indicative of trafficking, and information obtained during the aforementioned store visit and accompanying report and photos taken by a FNS contractor.

Appellant contends that it has a large amount of EBT customers and the disqualification will not only affect the store but it will also be very inconvenient for the customers who live in the homeless shelter. 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 SNAP. **5 U.S.C. § 552 (b)(7)(E)**. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA.

Furthermore, giving special consideration to economic hardship of 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. Appellant admitted that it did not review the SNAP Retailer Training Manual and SNAP regulations provided by FNS therefore, ownerships contention does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

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.

Summary

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in four 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 foods in inventory to cover SNAP redemption totals for the review months, the lack of 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 combination/other grocery stores in the State.

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. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy 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. 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 deems 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.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated May 18, 2017, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

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.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Aihua Dong dba C & F Convenience 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 Aihua Dong dba C & F Convenience Store is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, 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

October 17, 2017