

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

All In One Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0212932

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that All In One Food Mart, (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 February 25, 2019.

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 October 23, 2018, 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 2018 through September 2018. 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).

In correspondence received October 31, 2018, Appellant replied to the charge letter and generally stated that it is sending all receipts with details for the SNAP transactions. Appellant provided an explanation for not having register receipts for six of the transactions and stated that their computer system only saves five months of detail. Appellant provided copies of 101 register receipts in support of its position.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated February 25, 2019. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations 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 March 1, 2019, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, 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 April 2018 through September 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. 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:

1. All the employees have been provided full training about the list of products which are approved by USDA.
2. All the Employees have been provided Ethic Training and Rules and Regulations of USDA.
3. One of the owners is always present at the business and makes sure that no violations happen.
4. One of the best POS systems along with a scanner has been installed to prevent any mistakes or violations.
5. Please consider all the explanations and grant the authorization to continue with EBT.

Appellant provided a letter explaining the Business Plus Accounting Touch POS software and the purchase invoice dated March 1, 2019. Appellant also provided invoices dated February

2014 showing the purchase of its scanner and computer system as well as four color photographs of the cash register system. 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 initially authorized the business as a medium grocery store on July 1, 2014. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the September 21, 2018, 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:

1. Three cash registers, one POS device, one optical scanner. One large checkout counter area partially obstructed by other smaller items available for sale.
2. Estimated to be approximately 2,952 square feet.
3. No shopping carts and approximately 10 hand baskets for customer use.
4. No adding machines and one specialty register present (Lottery, Western Union, etc.)
5. Store does not operate through a night window or plastic barrier with food stock behind the barrier.
6. No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
7. No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
8. Food stored in an area outside of public view. Area approximately 336 square feet.
9. Store has storage freezers or coolers but no food stored off site.
10. Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
11. Store does not take telephone or online orders and does not offer delivery
12. Highest priced eligible food items were listed as Maxwell House Coffee (\$5.49), Bournvita (\$8.99), Salwa Beef Shammi Kebab (\$8.99) and Red Label Tea (\$17.99).
13. Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, clothing items, health and beauty aids, lottery tickets, mobile phones, pet food, cookware, automotive products and cleaning products.
14. Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Very limited selection of fresh produce. No fresh meat and does not sell in bulk.
15. A few sparsely stocked shelves or empty spots.
16. No kitchen/prepared food area.
17. No hot food sold.
18. No deli or prepared food section.
19. No meat or seafood specials or bundles or fruit/vegetable boxes sold.

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 from the accounts of individual SNAP households within a set time period.

During the review period, there were 41 sets of 104 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant contends that one of the best POS systems along with a scanner has been installed to prevent any mistakes or violations. Appellant provided a letter explaining the Business Plus Accounting Touch POS software and the purchase invoice dated March 1, 2019. Appellant also provided invoices dated February 2014 showing the purchase of its scanner and computer system as well as four color photographs of the cash register system. With its response to the charge letter, Appellant also supplied copies of 101 register receipts without the accompanying EBT receipts in support of its position that the EBT transactions were legitimate SNAP transactions. Upon review of the receipts they appeared to be legitimate at face value however after a closer review it appears that they may have been contrived to match the transactions cited in the charge letter.

The letter from the software company states "Our software does not integrate with any system to perform the payment transaction. Payment transactions are handled through a separate EBT capable terminal and then entered in to our software. On August 1, 2019, I spoke with 5 U.S.C. § 552 (b)(6) & (b)(7)(C) the Executive Vice President of Business Software Solutions, the company that provided the letter in this review. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) indicated that the software never discards any transaction data and will be archived based on the number of days entered by the retailer, if any, and that archived data can be retrieved.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) also indicated that retailers can simple change the date on the computer to create new receipts that contain that date however if those receipts are compared to original archived data the ticket numbers will not match. I explained the appearance of the receipt for transaction #64 and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated that it appears that the receipt contains two headers which the system absolutely does not do. More incriminating is the fact that the receipt headers have two different dates and time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) also stated that ticket numbers start at 1000 and go to 999,999 before they roll over and begin again from 1000.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Additionally, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated that the system does not interact with EBT and does not actually complete the EBT transactions. The clerk needs to enter the payment information manually. Receipt #24 shows a list of eligible food items with sales tax charged in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) however, it shows 5 U.S.C. § 552 (b)(6) & (b)(7)(C) paid as cash and the remaining as EBT in an attempt to match transaction #24 of the charge letter; likewise, receipt #46 shows a list of eligible food items with no tax charged but 5 U.S.C. § 552 (b)(6) & (b)(7)(C) paid as cash and the remainder paid as EBT.

Receipt #23 shows a list of eligible food items however the payment type is listed as cash and there are no SNAP transactions listed on the charge letter in that amount and receipt #85 shows a list of eligible food items with a sales tax amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a total of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the total should have been 5 U.S.C. § 552 (b)(6) & (b)(7)(C) but an amount tendered (no payment form listed) 5 U.S.C. § 552 (b)(6) & (b)(7)(C), change given in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and EBT charged in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This receipt does not follow normal register transaction actions. The record reflects that Appellant provided receipts for 94 of the SNAP transactions in the charge letter but claimed there were no records for the remaining transactions. No corresponding EBT receipts were provided.

Appellant indicated that its computer system only saves five months of detail. As previously stated, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) indicated, during the telephone conversation on August 1, 2019, that the software never discards any transaction data and that the data will be archived based on the number of days entered by the retailer, if any, and that archived data can be retrieved. Therefore Appellant's assertion that the system only saves five months of detail is incorrect. Additionally, five months of data, dating back from the response date would be June 2018. Therefore, all data prior to June should not be available based on Appellant's statement. (April/May of the review period should not be available) however, Appellant provided receipts for transaction #40 5 U.S.C. § 552 (b)(6) & (b)(7)(C), #41 5 U.S.C. § 552 (b)(6) & (b)(7)(C), #67 5 U.S.C. § 552 (b)(6) & (b)(7)(C), #68 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and #127 5 U.S.C. § 552 (b)(6) & (b)(7)(C) but indicated that there were no records for all other transactions that took place in May 2018. It is questionable that Appellant would have access to some receipts and not others especially since it has been relayed that the system does not discard any transaction data.

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

The record reflects that a detailed analysis of the receipts was conducted and it was discovered that they contained numerous higher priced items than those on the store visit documentation. Some examples include: Suraj Almonds listed on receipts #8 & #29 for \$10.99. Basmati Rice is listed on receipts #10 & #17 for \$10.99. Tilda Basmati is listed on receipts #41, #54, #86 & #104 for \$14.99. Nestle Nido is listed on receipt #99 for \$16.99, and Royal Basmati is listed on receipts #59 & #141 for \$20. Although it may be possible that some higher priced items could

have been overlooked during the store visit, it is noteworthy to mention that some items were listed on multiple receipts but at different price points and there were meat items on the receipts that were not in any of the store visit photographs such as oxtail and Goat Meat.

Other than copies of receipts, Appellant did not provide any specific explanations for the transaction pattern in this Attachment. Since it appears that some of these receipts may have been fabricated to account for the SNAP transactions and their legitimacy is questioned, they are considered insufficient evidence to validate all of the SNAP transactions as cited in the charge letter. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 130 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of mostly low priced foods. The firm does not offer food in bulk and has a few high priced items however there are no shopping carts available in which to transport large amounts of food items to the counter area. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. The record reflects that during the review period, Appellant's total dollar volume was 5 U.S.C. § 552 (b)(7)(E) greater than the county average for this store type and its total transaction count was 5 U.S.C. § 552 (b)(7)(E) greater than the county average.

Appellant contends that one of the owners is always present at the business to make sure that no violation happen, all employees are fully trained about the list of products which are approved by USDA not always at the store however; all employees are well trained and are instructed to sell only the items that are eligible for SNAP. With regard to this contention, it cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, Appellant is liable for all violative transactions handled by store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA.

Appellant did not offer, with its review request, any other specific explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 2 of the Charge letter.

Retailer Operations conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these

households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Harford County area of Maryland. This is another strong trafficking indicator.

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.

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 a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the 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 medium 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's 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's 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 October 23, 2018, 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 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 All In One Food Mart 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 All In One Food Mart is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with

respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

August 12, 2019