

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

**A M Food Market Inc,**

**Appellant,**

**v.**

**Case Number: C0203370**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that A M Food Market Inc. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

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

**CASE CHRONOLOGY**

By Charge letter dated November 8, 2017, Retailer Operations informed the owners that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent

disqualification. One owner responded to the Charge letter by facsimile dated November 11, 2017, whereby he denied all the charges and requested a FOIA.

By letter dated January 11, 2018, the FOIA office responded to the FOIA request. The record states that the owners did not file an appeal to the FOIA reply within the 90 day timeframe. On April 12, 2018, Retailer Operations sent the owners a letter with a due date for any information, explanation, or evidence regarding the Charge letter. The record confirms that this letter was delivered April 16, 2018. On April 19, 2018, one owner reportedly left a voicemail for Retailer Operations' staff. Per the documentation in the file, on April 20, 2018, the Retailer Operations' staffer made several unsuccessful telephone calls to the owner at the number listed on the voicemail and at Appellant.

Retailer Operations issued a Determination letter dated April 26, 2018. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter apparently misdated January 5, 2018, counsel appealed Retailer Operations' determination and requested administrative review. This letter was postmarked May 4, 2018. Attached to said letter was a owner-signed letter of representation by counsel dated April 30, 2018.

The administrative review appeal was granted by letter dated May 15, 2018. Counsel provided additional vendor information by a cover letter dated May 24, 2018, and two letters both dated June 2, 2018. Upon receipt by this office, the information was provided to Retailer Operations for review. Retailer Operations completed its review June 12, 2018.

## **STANDARD OF REVIEW**

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

## **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may

be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) reads: “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: “Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption.”

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

7 CFR § 278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

### **SUMMARY OF THE CHARGES**

The issue in this review is whether through a preponderance of evidence, it is more likely true than not true, that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP EBT transaction data during the period of April 2017 through September 2017. The patterns of transaction characteristics indicative of trafficking are:

1. An unusual number of transactions ending in a same cents value.
2. Multiple transactions made from individual benefit accounts in unusually short time frames.
3. Excessively large purchase transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

The following may represent a summary of the contentions however, in reaching a decision consideration has been given to all contentions presented.

- The owners operate their establishment in compliance with FSP regulations.
- Since the market began accepting food coupons, it has maintained a comprehensive training program to educate employees on the proper handling of food coupons.
- This program includes senior management's one-on-one training with new hires.
- The market maintains a zero tolerance policy regarding the handling of food coupons.
- All employees are continually tested on FSP regulation and policy. These tests are administered by an owner.
- The owner has installed a surveillance system to monitor the POS machine. The owners keep a constant eye on the video feed and are able to see if a mistake is made.
- Only three people operate the POS machine during the time period you allege trafficking, including the two owners and a trusted employee.
- They regularly review the SNAP Training Guide for Retailers and have viewed the training video.
- All of the register operators deny ever exchanging SNAP benefits for cash.
- The owners represent they are wholly unaware of any violation.
- The basis on which your department rests its trafficking charge is arbitrary and lacks objectively verifiable means of ascertaining the truth. The charges in the letter are unfounded and pure conjecture.
- The owners did not break the law or any SNAP regulations. They understand how important the program is for their business and they respect the law.

Counsel provided a CD ROM with store photos and vendor invoices.

## ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When there are a disproportionate number of transactions that end in same cents values it appears that these transaction amounts are contrived. In the absence of any compelling evidence to the contrary, these transactions are indicative of trafficking.

No change is provided with SNAP transactions, therefore there is no incentive to price items in a certain way. The owners provided no price list of the eligible foods at Appellant and pricing is not readily discernable from the photos on the CD. No itemized cash register tapes were advanced. A small number of invoices of eligible foods were advanced which did not support SNAP redemptions. The photos on the CD were taken well after the Charge letter. No business bank records or federal and state business tax filings were provided. The owners have not by a preponderance of evidence demonstrated that this Attachment lists legitimate SNAP transactions for eligible foods.

**Attachment 2:** Listed are 81 transactions in 32 sets of transactions conducted by 25 different households (HHs). Multiple transactions within a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period is a method used to avoid high dollar transactions that cannot be supported, and such transactions are indicative of trafficking.

At the time of the store visit on August 23, 2017, eligible food stock consisted of packaged foods, canned foods, some deli meats and cheeses, frozen foods, and accessory foods. There were limited fresh fruits and vegetables in stock. Appellant stocked a variety of ineligible items to include: tobacco, paper products, health and beauty aids, cleaning products and housewares. The firm is equipped with a kitchen area for prepared food items. There is a large menu board posted on the wall listing a variety of custom sandwiches along with prices that are not readable.

Counsel provided a CD with store photos of stock apparently taken after the date of the store visit. The small grocery appears to be well stocked in these photos with the same types of items as seen during the FNS-contractor store visit. A pricing structure is not discernable from the photos and a list of eligible items with pricing was not provided.

The record shows that within one mile of Appellant there more than 70 authorized retailers including other small grocery stores and larger store types. The data shows that within one day of conducting a transaction at Appellant, 60% of the flagged HHs on this Attachment conducted a SNAP transaction at a large grocery, supermarket or super store. Thus, recipients had access to and did use other shopping options.

Retailer Operations analyzed the 12 copies of vendor invoices provided as evidence in this matter. The Krasdale Foods, Inc. and Jetro Cash and Carry documents were not itemized to show eligible items acquired. As such Retailer Operations did not consider these invoices. Retailer Operations found that all the other invoices were from Gary's Beverages, and totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with a 40% markup applied. During the review months, the SNAP redemptions at Appellant were well in excess of this amount.

The owners did not provide attestations from recipients regarding the shopping pattern in this Attachment. Upon review, the owners did not by a preponderance of the evidence demonstrate that the listed transactions are the result of the exchange of benefits for SNAP eligible foods rather than trafficking.

**Attachment 3:** Listed are 362 transactions conducted for amounts that exceed the average transaction amount for the same store type in the same state by more than three times. 5 U.S.C. § 552 (b)(7)(E). This is unusual.

The onsite report indicates there were two handheld baskets and no shopping carts to assist recipients with the collection and movement of large volumes of items in the store that might total to high dollar amounts. The checkout area is enclosed by plexiglass, has perhaps 24 inches of space to place items on a small ledge, and is fronted by a reach-in display case. These characteristics combine to make the logistics of large dollar transactions challenging.

With regards to the contention that the substance of Retailer Operations' case against the firm is derived from computer printouts, 7 CFR §278.6(a) establishes the authority upon which FNS may disqualify any authorized retail food store and states that a finding of a violation may be 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. Therefore, that Retailer Operations used computer printouts of transaction data and other reports, in addition to an onsite store visit report and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking occurred, is as valid a means of establishing facts as direct evidence obtained through an on-site investigation and the eye witnessing of trafficking.

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. It is Appellant's burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same. An Appellant that seeks to set aside an agency sanction must focus its probative efforts on providing evidence by a preponderance that the transaction activity at issue is not due to SNAP benefit trafficking. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious in the Attachments provided with the Charge letter. This burden has not been met.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. The owners provided insufficient vendor invoices of eligible items acquired in inventory to support Appellant's SNAP redemptions. The owners provided no itemized cash register tapes for the review months. No pricing information was advanced. No SNAP customer statements were provided to support that the transactions listed were for eligible foods. No federal business tax returns or state tax filings were advanced, and no banking statements were provided. Thus, the owners have not provided a preponderance of evidence that the transactions listed on the Attachments are for SNAP eligible foods rather than the result of trafficking.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The owners failed to submit any documentation to show that they met the four criteria in order to qualify for a CMP. While counsel listed efforts related to training and compliance, no evidence was provided to support the claims. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Based on empirical data and in the absence of a preponderance of evidence of the legitimacy of the transactions listed on the Attachments, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to a judicial review of this decision. 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 Appellant's owners 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

August 1, 2018