

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

**Amir Food Mart,**

**Appellant,**

**v.**

**Case Number: C0214440**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record indicates that Amir Food Mart (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retail food store in the SNAP, as imposed by the Retailer Operations Division (Retailer Operations), was appropriate.

**ISSUE**

The issue accepted for review is whether Retailer Operations took 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 FNS.

**CASE CHRONOLOGY**

By Charge letter dated December 13, 2018, Retailer Operations informed the owner that FNS had compiled evidence that Appellant had violated the SNAP regulations based on analysis of electronic benefit transfer (EBT) transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter December 20, 2018. Retailer Operations issued a Determination letter dated January 30, 2019. This letter informed the owner that Appellant was permanently disqualified from the SNAP in accordance with Sections 278.6(c), and 278.6(e)(1), of the regulations.

Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the regulations. The firm was deemed not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations.

By letter dated February 12, 2019, the owner, via counsel, appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated February 26, 2019. Counsel filed a FOIA request dated February 12, 2019. The agency provided a reply to the FOIA dated March 19, 2019. Counsel provided additional information dated April 10, 2018. Retailer Operations provided this office its review of the additional information on April 17, 2019.

### **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 that 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 Section 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 in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food 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(e)(1) states: “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 § 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 the evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the period of June 2018 through October 2018. This involved two patterns of transactions indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated here.

- A lot of my clients buy items and they come back in few minutes or hours and buy more items.
- There is no ID required we don’t know who is who and when they bought before.
- We sell a lot of products in bulk. We have a lot of products we bring to customers upon order only. We do not keep it in the store especially poultry and meat products.
- We have a lot of packages that has a large value. These packages average price is \$140.
- I provided receipts to show a return regarding two consecutive purchases on 7/30/18.
- My client categorically denies the allegations.
- One can only conclude that any attempt to allege trafficking based upon its ALERT program which analyzes raw transaction data can only be based upon illegal arbitrary and capricious standards which violate both procedural and substantive due process guarantees set forth in the Constitution of the United States.

- The Department hasn't proffered any authority which has found that the ALERT program system and its inherent conclusions of law and fact are even credible enough to be admitted into evidence, let alone be sufficient to establish the Department's burden of proof that trafficking has occurred.
- The Department's process denies my client due process by delaying its charging letter more than three months after its test period expired. A significant method of refuting electronic analysis charging of trafficking is the review of video system data to prove actual sales which match those alleged. Most if not all small sized retailer video systems only store data for 14 to 21 days. Therefore, the Department has virtually eliminated the best avenue of defense to the allegations charged by its delay in charging.
- The survey form, photos, and checklist completed at my client's store on or about September 25, 2018, by an undisclosed USDA employee or contractor accurately describe conditions in the store which cut against the allegation of excessively high dollar amounts were made during the test period. Said report notes that Amir Food offered most of the items in each of the four food groups.
- The story documents that the area became a "food desert" after 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 2013 closure.

The owner provided copies of three EBT receipts and photos of stock and store signage. Counsel provided a file with attachments with his additional reply.

## ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 42 transactions in 21 sets of two transactions each, conducted by 21 different households (HHs). Retailer Operations noted the average 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per transaction, an amount that is more than double the average SNAP transaction for a super store in Cook County during the review period, let alone a small grocery. 5 U.S.C. § 552 (b)(7)(E).

Contentions:

- Only the first 8 sets occurred on the same day. 5 U.S.C. § 552 (b)(7)(E). The remaining transactions were on separate days.
- This miniscule number of such transactions becomes statistically insignificant given the thousands of reported sales occurring within the sample period. They certainly are not indicative of the characteristic "trafficking" incidents wherein multiple transactions occur 5 U.S.C. § 552 (b)(7)(E) while the customer is still standing in line.
- It is far from uncommon for customers to return within the same day or the next day to purchase more items necessary for unexpected needs, forgotten items, and most importantly items that couldn't be carried in a single trip due to the lack of personal transportation or space on public transportation due to the specific area wherein the store is located.

- It is not at all unusual for low income recipient families to allocate proportional shares of benefits among themselves. Hence each may have their own items which are purchased as a group, but imputed to the SNAP recorder separately in an effort to track proportional shares of the benefits. Retailers can't even keep track of family sales due to the lack of identification on the participant cards.
- Given the low number of such transactions and the lack of short duration purchases, no rational conclusion can be drawn which implicates the client in any inappropriate activity.

Retailer Operations found that there were no shopping carts or shopping baskets available for recipient use at Appellant. A cart was noted in the storage room that appeared to be used for stocking goods. The FNS-contractor noted poor lighting in the store. The checkout area was a long countertop. Appellant stocked non-food inventory, not allowed for purchased with SNAP benefits, including: tobacco products, automobile products, health and beauty aids, paper goods, and cleaning products.

The firm appeared to offer packages of unprocessed chicken. No other unprocessed meats were noted in the store visit photos. The firm did have signage for "Special Meat" packages by order, priced at \$49.99, \$79.99, and \$99.99. The signage did not include any details about what was included in these packages. Signage also indicated the firm offered cases of chicken wings, tenders, or nuggets by order. No information on pricing or volume was included. There was also a sign indicating the firm sold Italian beef, juice, and bread for \$34.99.

According to the record, there are 31 other authorized traditional retail firms within a one-mile radius of Appellant including: five additional small grocery stores, three medium groceries, one large grocery store, and two supermarkets. Retailer Operations determined that there are numerous other shopping options located within a reasonable distance from Appellant with likely equal or better food stock and comparable prices. Shopping histories of beneficiaries in the record confirm that households did use SNAP benefits at other authorized stores.

Retailer Operations reviewed the three closest small grocery stores located within approximately 0.7 miles from Appellant as comparison stores. All three firms were authorized throughout the review period, did not have an active compliance case, and each completed 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP redemptions. 5 U.S.C. § 552 (b)(7)(E). Appellant had 21 flagged data sets on this Attachment, as compared to the three local comparator stores, two of which had zero data sets flagged, and one that had four sets flagged. Thus, Appellant's data was unusual.

The record includes the SNAP transaction history a flagged household that confirms that the household was also making transactions at the nearby medium grocery store located just 0.15 miles from Appellant that offered meat packages. Retailer Operations accessed the household's home address from the Illinois administrative terminal. Based on the household transactions and household address information, Retailer Operations found that it appeared that this household was traveling past the superiorly stocked comparator medium grocery to conduct transactions at Appellant for larger dollar amounts. Based on the stock available at both stores, Retailer

Operations determined that the large dollar transactions at Appellant were more likely trafficking rather than purchases of eligible food items.

No banking records, no federal business tax submissions, or state sales tax forms were advanced to support that Appellant was not trafficking. The owner provided no recipient affidavits to attest to shopping behaviors of flagged households at Appellant. No vendor invoices of eligible foods were provided to support Appellant's SNAP redemption volume. No itemized cash register tapes were advanced for review.

**Attachment 2:** Listed are 700 individual transactions conducted by 72 different households. **5 U.S.C. § 552 (b)(7)(E)**. The average SNAP transaction amount for a super store in Cook County during the review period was \$41.32. All of the transactions on this Attachment exceeded the average Cook County super store transactions by more than 45% for the same time period. Compared to three local small groceries, Appellant had hundreds of large dollar transactions flagged on this Attachment's parameters, the other nearby stores' transactions flagged numbering just 11, 12 and 22. This is unusual and indicative of trafficking.

Contentions:

- The list of "high dollar" transactions are certainly not out of character for Amir's given the totality of the facts. Said list shows purchases made by a limited group of families who tend to make larger purchases (which are common to many families whether in the program or not) close to monthly funds availability.
- The "confidential" data of family size and amount of monthly available funds must be scrutinized. My client was denied the right to do so.
- USDA's FOIA response to my request for information regarding ALERT was denied in large part. The Department must disclose not only how it determined what is an "excessively large transaction," and what is "your type of firm," but how such transactions amount to trafficking.
- The report indicates that Amir offered "meat bundles" as part of its offering. Photos of the signs offering the bundles were included. I have included three handwritten pages which depict the items included in each bundle which include various meat options plus other staples including dairy, cooking oil, canned goods, rice and vegetables. The three separate bundle options are advertised as being offered "by order." Amir only orders bulk supplies to fill these orders upon demand.
- These options adequately explain the "high dollar" list of suspect transactions alleged as trafficking. The reason for the existence of these options being utilized by a large number of member families is found in the relative absence of any medium to large supermarkets in the high density, low income area surrounding Amir.

Retailer Operations reviewed a store visit report completed on August 23, 2018, for a medium grocery located just 0.15 miles from Appellant. This firm, carried meat packages and what appeared to be superior stock to Appellant's, including a variety of unprocessed meats and fresh produce. For the same time frame, the comparator medium grocery had 285 flags on this Attachment as compared to Appellant's 700. Retailer Operations also compared the SNAP average transaction amount at Appellant to the local medium grocery store. The data shows that Appellant's average SNAP transaction amount was 35% higher than the average SNAP

transaction at the superiorly stocked medium grocery. 5 U.S.C. § 552 (b)(7)(E). This is suspicious and indicative of trafficking.

The posters seen at Appellant advertised various meat packages, clarified by counsel to contain 18 possible items with prices for \$99.99, 12 items with prices for \$79.99, and 12 items with prices for \$49.99. The record shows that on January 29, 2019, Retailer Operations contacted the firm by telephone to offer a time extension for the owner to supply invoices/receipts or other evidence to support his statement that the firm offered packages and bulk items that were not kept at the store. Any such items would not have been available as inventory at the time of the onsite store visit, and Retailer Operations wanted to confirm such possible inventory.

The record states that the owner indicated he did not have any receipts or invoices for 2018, including the months of the review period. The owner did provide some photos of store inventory, which were consistent with the photos taken by the FNS-contractor. There were several photos submitted after the Charge letter that showed more bulk poultry items. However, the firm offered no evidence beyond the photos to support the contention that the firm bought and sold bulk or meat package items during the review period. A list of items and prices, without adequate invoice evidence to support the acquisition of the items listed, does not adequately explain the transactions cited on the Attachments.

It is possible some of the transactions on this Attachment were the result of legitimate purchases of eligible food stock. However, the owner offered insufficient evidence to support his assertions. The owner's initial reply stated the average cost of the packages was \$140. It is unclear how this amount was computed. The highest priced "package" advertised in the firm's signage was \$99.99. This amount is listed once on Attachment 1 and five times on this Attachment. The average transaction amount of the 700 listed on this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The owner referenced bringing food "to customers upon order." It is unclear if the owner intended this statement to mean that the firm offered delivery. According to the store visit report, during which the FNS-contractor spoke with the owner, the firm did not offer delivery. Retailer Operations determined that there is was insufficient evidence to substantiate the owner's allegations that the firm sold meat packages and/or bundles during the review period. As such, there did not appear to be credible explanations for the firm's high SNAP average transaction amount, its high total SNAP dollar volume, or its number of flags on the Attachments, which varied by a noticeable amount from small grocery stores in the same state, in the same County, and the three nearest small grocery stores to Appellant. Retailer Operations determined that even if it granted that the firm did offer meat packages, it was unlikely that the firm's average transaction amount, and Attachment flag activity would exceed the nearby medium grocery store that offered a variety of meat bundles and superior stock based on a 2018 store visit.

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 Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence 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. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, Retailer Operations determined that Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

With regards to the contention that the substance of Retailer Operations’ case against the firm is derived from transaction data and that there are no independent live witnesses to affirm the trafficking allegations, 7 CFR §278.6(a), which establishes the authority upon which FNS may disqualify any authorized retail food store, reads, in 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.” Therefore, that Retailer Operations used computer transaction data reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking are occurring, is as valid a means of establishing facts as direct evidence obtained through an on-site investigation and the eye witnessing of trafficking.

The burden to disprove trafficking rests with Appellant. In this matter, insufficient evidence was advanced to support the contention. No itemized cash register receipts were provided. No vendor invoices to document eligible items sufficient to cover Appellant’s SNAP redemptions were provided. No customer statements were provided to explain the shopping behaviors of flagged households at Appellant. No federal or state business tax submissions were advanced. No business banking records were provided.

Permanent disqualification is warranted on the first occasion of trafficking. 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 cited is not due to SNAP benefit trafficking. Appellant has not met its burden.

The administrative review process does not include an assessment of the constitutionality of the laws and regulations under which the agency imposed the adverse action, but rather whether the agency actions undertaken in this matter were proper pursuant to those laws and regulations, and sustainable by a preponderance of evidence. As such, this office does not have the authority to assess whether the United States Congress, in its enactment of legislation, has conformed to Constitutional mandates. Additionally, challenges to the laws and regulations governing the SNAP are more appropriately the province of judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

#### **CIVIL MONEY PENALTY**

To be considered eligible for a CMP, a firm must establish by substantial evidence, its fulfillment of each of the criteria under 7 CFR § 278.6(i). The record shows that Appellant did not request a Trafficking Civil Money Penalty within ten days of receiving their Charge letter. As such, Retailer Operations found that Appellant did not meet the requirements to qualify for a CMP in lieu of permanent disqualification.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's EBT 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 in SNAP benefits. The review of all the evidence does not support by a preponderance, that legitimate SNAP purchases, more likely than trafficking, accounted for the transactions listed on the Attachments. Upon review of all of the evidence in this matter, it is determined that it more substantially supports a conclusion that the SNAP transaction activity at Appellant was due to SNAP benefit trafficking. Thus, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

Appellant did not provide substantial documentation for consideration for a CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP according to the terms of Section 278.6(i) of the SNAP regulations.

## **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 judicial review of this decision. 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 the Appellant's owner resides or is 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

April 23, 2019