

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

Atencios Market,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0227466

FINAL AGENCY DECISION

The record supports that Atencios Market (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 Office of Retailer Operations and Compliance (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 March 11, 2020, 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.

Ownership responded to the Charge letter by telephone on March 13, 2020. Retailer Operations issued a Credit Charge letter dated March 16, 2020. Appellant provided a response March 24, 2020. Retailer Operations issued a Determination letter dated March 31, 2020. 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 dated April 7, 2020, one owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated April 13, 2020.

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 credible, 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) 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 § 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 § 278.2(f) states: "SNAP 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."

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 transaction data during the period of August 2019 through January 2020. The patterns of transaction characteristics indicative of trafficking are:

- **Attachment 1:** There were 85 transactions ending in a same cents value. Based on the store pricing information gathered from the store visit, it is unlikely that items purchased together would routinely total to the same ending amount. Consequently, when a large number of transactions that end in a same cent amount appear in large numbers, these transaction amounts are likely contrived, and in the absence of any compelling rationale to the contrary are indicative of trafficking.
- **Attachment 2:** There were 33 transactions in a repeated dollar value **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The occurrence of the repeated transaction amount is at a greater than the expected average transaction frequency for the dollar amount. Therefore, in the absence of any compelling rationale to the contrary, it appears that these transaction amounts are contrived and are indicative of trafficking.
- **Attachment 3:** Listed are 106 transactions in 50 sets that were made were made from 40 different accounts of individual SNAP households within a set time period. Multiple transactions, conducted within a set time period, is a method stores use to avoid single high dollar transactions that cannot be supported, and are indicative of trafficking.
- **Attachment 4:** Listed at 79 transactions in 53 sets wherein the bulk of 30 unique SNAP households’ remaining benefits were depleted within short time frames.
- **Attachment 5:** Listed are 119 EBT transactions conducted by 64 different households that are large based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented, including any not referenced. The responding owner provided customer tickets and vendor invoices.

- We admit helping people have charge accounts with stamps. This is our first offense in 24 years.
- We sent the evidence requested. This is not a fair or appropriate decision of our bad judgement.
- Our customers don't have transportation to other stores.
- I know a lot of the transactions look bad but a lot of them are legitimate. Credit accounts. Ending credit accounts now.
- I can get affidavits from regulars but a lot are transients, work the farms. We would write it on a ticket and then when they paid it we would give the ticket back.
- On the invoices the gross profit percentages are posted.

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.

The regulations at 7 CFR § 278.6(a) state 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, and that 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. The owner(s) has the burden of providing credible, 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.

Retailer Operations found that, via its submitted vendor invoices, Appellant documented sufficient SNAP eligible items were acquired to support the SNAP redemptions for the review period. However, Retailer Operations determined that the SNAP-eligible inventory evidence was not sufficient, by a preponderance of the evidence, to override the charged trafficking. The owner claimed in a telephone conversation with Retailer Operations that credit was advanced to beneficiaries, a violation of the SNAP regulations. Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A retailer that claims credit accounts for the Attachment patterns must provide adequate evidence that credit accounts existed at the time the suspicious EBT transactions occurred. Such evidence may include an accounts receivable ledger which lists the name of each recipient, and the dates and amounts of each transaction the retailer claims was credit. The information should also show that only eligible foods were acquired on violative credit. A firm that commits documented credit violations is sanctioned with a one year disqualification period and may incur fiscal claims. If the retailer

does not provide adequate evidence of credit documentation, the retailer shall be permanently disqualified for trafficking.

The retailer provided receipts indicating that some transactions were part of a system of credit extended to SNAP households. Retailer Operations determined that most of the documentation advanced to support credit accounts provided no detailed descriptions of items allegedly acquired. This precluded Retailer Operations' ability to confirm if sold items were SNAP-eligible. Only two of the receipts provided 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A data check shows that there was no SNAP transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on September 14, 2019, bringing into question whether the credit invoice dated 9/14/19, for a named individual, was a payment on a SNAP credit account. The data shows that this household, identified by using the State terminal, never made a SNAP transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant during the review period. The highest dollar amount on the credit documentation for this person 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on 10/12/19 noted as "paid" towards his tab. The data shows that there is no corresponding SNAP transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) amount during the review period. It may be that SNAP violative credit was extended and the recipient paid back the credit with cash, but the system does not confirm that a SNAP transactions was made on that date for that stated amount.

The credit/payment documentation advanced is simply inadequate to more support credit for SNAP eligible food items on specified dates, and repayment of violative credit in SNAP benefits on specified dates. The store visit report shows that Appellant stocked: tobacco products, alcohol, automotive products, paper and party goods, health and beauty aids, housewares and gift items. Retailer Operations determined that while the responding owner provided limited documentation to partially support the claim of a credit account system, the documentation of violative credit accounts was not sufficient to overcome the charges of trafficking at Appellant.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is also available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain the SNAP rules.
- Information that the store owner is responsible for carefully reviewing the program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet

- From the “SNAP EBT Dos and Don’ts card (FNS-136, included in the authorization package) “Do not accept SNAP benefits (EBT) as payment on credit accounts.”
- From the SNAP Training Guide for Retailers: “SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of credit accounts. You may not hold customers’ SNAP EBT cards or card account information at your store for future use.”

Thus, ownership was provided multiple and redundant resources through which a thorough knowledge of SNAP rules and requirements could be readily obtained. By signing the certification to become a SNAP retailer, the owner(s) confirmed understanding of and agreement to abide by the rules and regulatory provisions. These include violations such as accepting SNAP benefits as payment on credit accounts or loans and trafficking. The certification is clear that violations of Program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the SNAP. Even if the responding owner’s could establish that said owner was not aware of the SNAP regulations, accepting the contention that unfamiliarity of the SNAP regulations is a mitigating factor, would render inert the enforcement provisions of the USDA’s very regulations.

The responding owner provided some pages of credit and payment tabs that included just first names, listed no household addresses, and had no SNAP ID information. Some tapes were paired with insufficiently detailed register receipts. Retailer Operations determined that the responding owner failed to provide sufficient evidence to support the legitimacy of the transactions listed on the Attachment patterns. Given the lack of detail regarding purported credit for eligible food sales, Retailer Operations was not convinced that the suspicious transaction patterns represented credit account transactions for eligible SNAP foods more likely than trafficking transactions as charged. The credit tickets did not record in detail all the items allegedly purchased to support that eligible items were transacted on violative credit, nor could some payment tickets be matched with SNAP transaction amounts on the dates specified.

The record shows that a complaint was made March 18, 2020, about Appellant with Alamosa County Social Services. The complainant stated that a girl memorized his card number and knew his pin, and that she admitted that she removed his food stamps for February at one time at the store without his card. The complainant stated that he “knew that this was a common practice at the store for some time.” He stated in March 2020, that again **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was removed from his card without a pin number. In addition, to the voluntary statement complaint, another complaint was noted as received on August 26, 2019, from Alamosa County Social Services that the store “is trafficking EBT benefits and instances of depleting SNAP balances without the cardholders’ consent.”

Upon review, the responding owner has not provided a preponderance of evidence to support that credit more accounted for the Attachment patterns than did trafficking. As such Retailer Operations properly permanently disqualified Appellant for 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 four criteria listed at the cited regulation are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owner did not submit substantive documentation to support a trafficking civil money penalty in lieu of permanent disqualification as required by the regulations.

The lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations, supports that the owners did not meet the criteria for a CMP. It is deemed that Retailer Operations properly denied a trafficking CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and household shopping analyses that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based upon empirical data, and in the absence of evidence of the legitimacy of the transaction patterns presented by Appellant, the preponderance of the evidence supports that trafficking 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. This decision is effective 30 days after the date of delivery to the firm.

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. If 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 the date of delivery of this Decision to the firm.

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

May 13, 2020