

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

Bachman Market LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0201317

FINAL AGENCY DECISION

The record indicates that Bachman Market LLC (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized food retailer 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 its 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

By Charge letter dated August 16, 2017, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that “establish clear and repetitive patterns of unusual, irregular, and

inexplicable SNAP activity for your type of firm.” The sanction for trafficking is permanent disqualification. The record shows that Appellant replied to the Charge letter August 21, 2017.

Retailer Operations concluded that trafficking had occurred as charged, and issued a Determination letter dated September 19, 2017. This 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 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. Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations.

By letter dated September 28, 2017, the owner appealed Retailer Operations’ determination, requested administrative review, and advanced new information which was provided to Retailer Operations for review. The appeal was granted by letter dated October 5, 2017.

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) 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 in part: “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 on review were based on an analysis of SNAP EBT transaction data during the period of November 2016 through April 2017. This involved two patterns of EBT transaction characteristics which are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS AND EVIDENCE

The following may represent a brief summary of the contentions in this matter however, in reaching a decision, attention has been given to all contentions presented, including any not specifically referenced.

- I would like USDA to understand this case since I have not done anything wrong. I have not violated any rules and regulations.
- If no one can purchase anything more than once in a daily basis then this is something that needs to be taught and told to the public.
- I separate items and ask how they are paying if items are not food. I total the items and they enter their pin.
- I have no control of how the customers manage and spend their food stamps.
- The store has the capability to provide clients with any amount they desire to purchase. A USDA Inspector took pictures and listed the items being sold which includes the back freezer and saw that the store is big and has more than enough merchandise.

Appellant advanced:

- Fourteen copies of interior store photographs, apparently taken 9/28/17.
- Four pages of sales data for June through September 2017.
- Vendor invoices dated from June 2017 to September 2017.

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: Listed are 74 transactions in 32 sets of two or more transactions, conducted by 16 different households. Appellant had more transactions flagged on this Attachment than six small groceries within a one mile radius. Multiple transactions conducted by the same households **5 U.S.C. § 552 (b)(7)(E)** supports that Appellant was attempting to avoid single high dollar transactions, a practice that is indicative of trafficking.

According to the record there at least shows there are 26 authorized retailers classified as medium groceries, large groceries, supermarkets and super stores within a one mile radius of Appellant. Further, there are 25 other authorized small grocery stores located within one-and-a-half miles of Appellant which apparently offer comparable items. The data supports that within one day of conducting a transaction at Appellant, 12 of the 16 households (HHs) listed, **5 U.S.C. § 552 (b)(7)(E)** conducted a SNAP transaction at a large grocery, a supermarket or superstore.

While some households may have conducted legitimate short time frame transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided vendor invoices of eligible items acquired to support its SNAP redemptions, however these were not from the relevant review months. No itemized cash register tapes were provided as evidence of eligible food sales. No business tax returns or state tax filings were advanced, and no banking information was provided. No beneficiary affidavits were advanced regarding multiple purchases in short time frames resulting in the data sets listed. Thus, the owner has not provided a preponderance of evidence that the transactions on this Attachment are for legitimate foods

Attachment 2: Listed are 168 EBT transactions conducted by 53 different households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The owner provided photographs that show stock of both eligible and ineligible items. The photographs show canned and packaged staple food items; accessory foods such as carbonated beverages, condiments, spices, and candies; snack food items; and fresh and perishable staple food items such as bread, milk, ice cream, bananas, deli meats and cheeses, and beef and poultry products. The owner did not provide a price list of his inventory of eligible foods, nor did he

provide vendor evidence of eligible food stock for the relevant review months. Appellant has the burden to prove by a preponderance of the evidence that he was not trafficking.

No evidence by means of recipient affidavits were advanced to support that recipients frequented Appellant to make frequent, large eligible food purchases. The large dollar amount transactions remain questionable when considering the proximity of larger authorized stores located in a mile radius of Appellant's location. A shopping analysis shows that recipients who frequented Appellant also shopped at larger stores, yet inexplicably spent large dollar amounts at Appellant.

The charged owner was given the opportunity to provide evidence of the legitimacy of the transactions listed. He provided some explanations as to why the transactions listed were legitimate. The explanation may be valid however, they lack sufficient supporting evidence. As noted, the invoices of eligible food stock were for months after the review time frame. Likewise, the SNAP sales figures provided are for the months of June 2017 to September 2017, which fall outside of the review period identified in the Charge letter.

CIVIL MONEY PENALTY

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. The owner did not submit documentation to prove that Appellant met the trafficking CMP requirements as stipulated in the regulations at 7 CFR Section 278.6(i). These regulations specify the criteria for a firm's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Accordingly, Retailer Operations determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

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 for the legitimacy of the transactions on the Attachments cited, it is more likely true than not true that violations did occur as charged by Retailer Operations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

Retailer Operations also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 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

November 29, 2017