

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

Badweynta India LLC #3823,

Appellant,

v.

Case Number: C0202771

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Badweynta India LLC #3823 as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Badweynta India LLC #3823.

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

In a letter dated October 6, 2017, the 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 March 2017 through August 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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).

The Appellant received the charge letter via UPS on October 9, 2017. In a letter postmarked October 17, 2017, the Appellant denied trafficking in SNAP benefits. The letter stated that the store sold food in bulk, was following correct policies and that its nearby customers shopped frequently at the store. The Appellant did not request a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i).

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated October 23, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked October 31, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i)

establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

***Trafficking** means 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 and hot food products prepared for immediate consumption.

7 CFR § 278.6(a) states, in part:

*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....** [Emphasis added.]*

7 CFR § 278.6(i) states, in part:

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) *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 as specified in § 278.6(i), 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).* [Emphasis added.]

(iii) *If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.* [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from March 2017 through August 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 94 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Multiple purchase transactions were made too rapidly to be credible. This attachment lists 13 pairs of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 3:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 18 sets of 38 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 4:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 190 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the charge letter and its request for administrative review, in relevant part:

- The transactions listed in the charge letter were processed correctly and were in compliance with the store's policies and procedures.
- The store sets its prices based on demand and that is why there are same cent values.
- Most of the store customers live nearby and some shop frequently at the store including a few times a day.
- Most of the store's customers purchase food in bulk and this explains the similar prices listed in the transactions.
- The store is implementing policies and procedures that will allow the store to comply with SNAP transactions and to participate in SNAP in the future.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Badweynta India LLC #3823 for the SNAP on October 26, 2016. The owner signed the SNAP application for the store on July 1, 2016 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking.

During the review period of March 2017 through August 2017, the Retailer Operations Division classified the store as a small grocery store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 15, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used

to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Badweynta India LLC #3823 is approximately 800 square feet in size.
- The store had only two (2) shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- Store personnel confirmed that there was no food stored outside of public view in a storage area and that no food was stored offsite.
- The store had some frozen cubes of meat (beef and goat), bags of flour and rice, and some international foods for sale. However, there were no large bulk foods that might sell for a high price. The highest priced item was a 27 pound bag of flour for \$25.99.
- The store had no special pricing policy and food items generally ended in typical retailer price amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The checkout area consisted of a small countertop cluttered with products for sale and other items. The store did not have a conveyor belt or optical scanner at the checkout. The limited space at the checkout area and lack of technology made it not conducive to conducting large transactions.

The store visit report indicated that the store appeared to be deficient in the dairy category at the time of the store visit, stocked no infant formula, no bread items, no eggs, very little in the fruits and vegetable category, and only frozen and canned meat in the meat/poultry/food category. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included health and beauty products, clothing, paper goods, household cleaning products, general houseware, party supplies, flower arrangements, souvenir and gift items.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors.

Bulk Sales

The Appellant generally states that many of the transactions cited in the charge letter were due to bulk sales. However, the Appellant did not provide any evidence such as itemized cash register receipts and store purchase invoices to support that the store sold food in bulk. As noted in the store visit report, there was no evidence of any bulk food that would normally sell for a high price to explain the irregular transaction patterns cited in the charge letter.

Same Cent Transactions

Charge Letter Attachment 1 lists 94 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the review period, Badweynta India LLC #3823 conducted 472 SNAP transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead, a review of the store visit report indicates that the store prices end in typical retailer pricing amounts for food. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant states that the store sets its prices based on demand and that is why there are so many same cent values. However, this statement is not sufficient to explain why the store has a disproportionate amount of high dollar SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Based on the store visit report, the Appellant's food inventory contains only a few higher priced items and a larger amount of inexpensive canned and packaged goods, single- serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionally result in total purchase prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more random statistical spread of ending cent 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions made too Rapidly to be Credible

Charge Letter Attachment 2 lists 13 pairs of transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator.

The average SNAP transaction for a small grocery store in Ohio during the review

period was \$21.20. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases. The fact that the store did not have an optical scanner or calculator would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

Despite the store's limitations in counter space and technology, it was rapidly processing consecutive SNAP transactions which included a least one excessively large transaction atypical of a SNAP small grocery store in Ohio. The Appellant offered no credible explanation as to how it could conduct such transactions. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 3 lists 18 sets of 38 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a small grocery store with limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a superstore or supermarket in Ohio. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant states that most of the store customers live nearby and some shop frequently at the store including a few times a day. However, the store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large

packages, or significant bulk items for sale.

In addition, the store's small and cluttered checkout counter space makes it unsuitable for conducting large transactions. The store also had only two (2) shopping carts and no shopping baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 4 cites 190 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The substantial number of high dollar purchases atypical of a SNAP authorized small grocery store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

A transaction spread analysis conducted by the Retailer Operations Division shows that Badweynta India LLC #3823 had many more transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) than the average SNAP small grocery store in Ohio. When the dollar amounts increased above this level, the average small grocery store SNAP transaction counts continued to decrease. However, the Appellant store transaction counts remained high and had a large spike 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store's limited food inventory, there is no legitimate reason why the store would have such abnormal spikes in SNAP transactions at those high dollar levels.

Sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile radius of Badweynta India LLC #3823 there are 15 comparable or larger SNAP authorized stores many of which appear to stock international specialty foods. These SNAP authorized stores include four (4) medium grocery stores, one (1) large grocery store and two (2)

superstores. A government report on SNAP benefit redemption patterns¹ revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery store with a limited selection of staple foods like Badweynta India LLC #3823.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Badweynta India LLC #3823 compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Badweynta India LLC #3823 often

5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at supermarkets and superstores. It is highly unlikely that a small grocery store with limited staple foods would have legitimate SNAP transactions much greater than these larger and better stocked supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store with only two (shopping carts) and no shopping baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

Corrective Action

The Appellant states that the store is implementing policies and procedures that will allow it to comply with SNAP transactions and to participate in SNAP in the future. It should be noted that the Appellant does not state the nature of these alleged policies and procedures.

With regard to this contention, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

circumstances existed at the time that was the basis of the Retailer Operations Division's action. It is not the authority of this review to consider what subsequent remedial actions may have been taken or be planned so that a store may begin to comply with program requirements.

In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned corrective actions implemented subsequent to program violations. Therefore, Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations 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. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Badweynta India LLC #3823, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

January 23, 2018