

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

B & M Mini Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217883

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of B & M Mini Mart (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by FNS’s Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against B & M Mini Mart.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from November 2018 through April 2019. This involved the following transaction patterns which are common trafficking indicators:

- There were a large number of transactions ending in a same cents value.
- There were multiple transactions made from the accounts of individual SNAP households within a set time period.

- The firm conducted EBT transactions that were large based on observed store characteristics and recorded food stock.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized B & M Mini Mart for SNAP participation as a convenience store on June 27, 2018. In a letter dated June 27, 2019, 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 between the months of November 2018 and April 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated July 8, 2019, the Appellant replied to the charge letter, stating that the unusual transaction patterns were not due to trafficking, but rather due to normal business practices. For example, the Appellant owner stated his father has been working at the store for almost 30 years and still does transactions "the old ways." The owner stated that sales are rung up manually and the firm's inventory is priced in even-dollar amounts, such as \$1.00 instead of \$0.99, or \$2.00 instead of \$1.99. Inventory is also priced in 50-cent intervals, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Appellant states, "...so that makes total at check out an even number most of times."

The Appellant further stated that the store may be small, but it carries all of the daily essentials as well as a full line of groceries, soft drinks, snacks, candy, and sweet bread.

Regarding multiple transactions occurring from the same household account in short timeframes, the Appellant stated that sometimes customers will bring other family members along with them and they will shop at the same time, resulting in multiple transactions in close proximity.

Finally, the Appellant stated that it has made only one mistake since starting the business: inadvertently charging a customer \$58.00 instead of \$0.58. The Appellant did not realize that it could process a refund, so the customer simply picked up more groceries.

In support of its reply, the Appellant submitted a number of documents, including affidavits from five customers saying that they shopped at B & M Mini Mart more than once a week because the store is close to their home and convenient for them. The Appellant also submitted 29 color photographs of the store's interior and inventory; and a large number of inventory purchase invoices and receipts from the six-month review period.

After analyzing the explanations and documentation provided by the Appellant and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated August 15, 2019. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The 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, but a CMP was not appropriate 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 SNAP violations.

In a letter postmarked August 21, 2019, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and 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(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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

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, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

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(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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.

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...

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant would like to explain what really happened at the store. The store owner did not mention this before because he was afraid of the outcome or the punishment he would receive. He did not realize that by withholding the information, he could be facing an even worse punishment of an indefinite ban from SNAP.
- The reason for the unusual SNAP transaction patterns is that the store was allowing loyal customers who lived nearby to purchase food items on credit. The customers would then repay the store with EBT benefits once the household's SNAP allotment was replenished.
- The Appellant thought that it could help households with their daily struggle. So credit accounts became a very important issue for customers who have been shopping at the store for years and years.
- Appellant is willing to accept the consequences for its actions.
- Appellant strongly believes that it did not trade EBT benefits for cash.
- Appellant acknowledges its fault for not being upfront and honest at first and regrets not mentioning these facts in its initial response to the charge letter.
- Appellant would like FNS to open an investigation and call its customers and get the facts straight and then reconsider the decision to permanently disqualify the firm from SNAP.
- Appellant is willing to accept a lesser punishment for its violations, if any, of the EBT program.

In support of its contentions, the Appellant submitted 21 handwritten statements from apparent SNAP customers who confirm that they were allowed to shop at B & M Mini Mart on credit and then pay the store back with their SNAP benefits at a later date. The Appellant also submitted 17 photos of EBT cards with both the EBT card number and customer name clearly visible. It should be noted that only one EBT card corresponds to any of the names on the handwritten statements.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced in this document.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained during a May 9, 2019, store inspection which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The store visit information was used to ascertain if there were justifiable explanations for the firm's irregular

SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- B & M Mini Mart is a small convenience store, approximately 900 square feet in size, operating in the city of Bakersfield, Kern County, California.
- At the time of the contractor's visit, the firm did not have any shopping carts or baskets for customer use, which is not unusual for stores of this size. Customers shopping in small stores like this generally purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It appears that the firm does not use optical scanners to process transactions.
- The checkout area consists of a very small, cluttered countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than one or two items at a time and little room for customers to maneuver with large amounts of groceries.
- The store's staple food stock is sufficient for program eligibility.
- SNAP-eligible, non-staple accessory food items include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood merchandise, including alcoholic beverages, tobacco products, personal care items, and other miscellaneous household merchandise.
- The most expensive food items for sale at the store include a 30.5-ounce container of coffee for \$12.99; a 40-ounce package of bacon for \$10.99; a 20-count case of Coca-Cola for \$8.99; and a box of Chex cereal for \$5.89.
- The contractor noted that the store did not appear to have a special pricing structure, such as large amounts of merchandise ending in even-dollar amounts. Most items appeared to end with a cents value of 9, which is very common. The contractor also noted that the store does not round transaction totals up or down at checkout.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit B & M Mini Mart to purchase large quantities of groceries, especially considering the minimal amount of staple food, the absence of shopping carts and baskets, and the availability of substantially larger SNAP-authorized stores in the area, including two superstores and a supermarket within a mile and a half radius of the firm. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were a large number of transactions ending in a same cents value. This attachment lists 202 transactions ending in .00, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). At the time of the contractor's inspection, the store did not appear to have a pricing structure in which most items ended in .00, .25, .50, or .75. By all indications, most items

ended with a cents value of 9, such as .49 or .99, which is the most common pricing structure among retail stores. As such, the likelihood that non-taxed transactions would so frequently and legitimately end in .00 or .50 is very low.

In its initial response to the charge letter, the Appellant argued that the owner's father, who apparently owned the store previously and remains involved in the store as a cashier, routinely rounds transaction totals at checkout. The Appellant further stated that its inventory is priced in even-dollar values. However, in its request for administrative review, the Appellant backed off its initial response and stated that what was really happening at the store to cause the unusual transaction patterns was a practice by the firm to allow customers to shop at the store on credit and then pay the store back at a later time.

The issue of credit accounts will be addressed in detail later in this document, but as the argument pertains to Attachment 1, this review finds the claim to lack credibility, particularly in relation to the lack of even-dollar pricing at the store. As noted earlier, at the time of the store inspection, most items appeared to end with a cents value of 9. While there were a small number of even-dollar prices, most items were not evenly-priced. If the firm were selling food items on credit at the prices actually posted in the store, it stands to reason that the total amount paid by the customer when paying off a credit balance would reflect that pricing structure. The store inspector, who completed the store visit in collaboration with store personnel, also indicated that the firm did not round transaction totals up or down at checkout.

This review does not contest that some transactions at the store may have legitimately ended with a cents value of .00, but the Appellant's explanation and evidence is insufficient to eliminate trafficking as a primary reason for the unusually large numbers of such transactions.

Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 20 sets of transactions (50 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). All told, the household spent over 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at this moderately stocked convenience store. Later that same day, the same household traveled to a popular superstore where it spent less than 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This review cannot comprehend what would have been available at B & M Mini Mart that would not have been available at the superstore 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Considering the amount of food it would take to add up to these transaction totals and considering the characteristics of the store and the availability of much larger grocery stores in the area, it is very unlikely that a household would legitimately make such large, repetitive transactions at a convenience store as it did in this example.

In its original response to the charge letter, the Appellant argued that customers will sometimes bring other family members along with them and they will shop at the same time, resulting in multiple transactions in close proximity. However, this explanation makes little sense. While the transactions were close enough together to cause FNS to question their legitimacy, the vast

majority of the transactions in Attachment 2 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, which does not support a claim of members of the same household shopping together.

As noted earlier, the Appellant backpedaled from its original response to the charge letter and claimed that the real reason for the unusual transaction patterns was the firm's practice of allowing credit accounts. This will be addressed in detail later in this document.

Charge Letter Attachment 3: The store conducted EBT transactions that were large based on observed store characteristics and recorded food stock. This attachment lists 239 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in the state of California. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in California was \$7.41. In Kern County, the average was slightly higher, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. But the average transaction in Attachment 3 is more than six times larger than the average purchase amount for this store type.

Given that the Appellant firm does sell a modest supply of staple foods as well as other SNAP-eligible food items, such as snacks and drinks, it is possible that there would be an occasional instance where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As such, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 3 lists six transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** during the review period, including a high of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Considering how many food items it would typically take to add up **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, and considering that the firm does not have any shopping carts or baskets, and given the fact that there are much larger grocery stores in the area with substantially greater inventory and variety, this review finds it unlikely that every transaction in Attachment 3 is a legitimate purchase of eligible food.

The Appellant did not offer any specific contentions related to the transactions in Attachment 3 except to say that the transaction patterns were the result of the firm allowing credit accounts. This contention will be addressed below.

This review does not doubt that B & M Mini Mart sells eligible food items and conducts some legitimate SNAP business. But when SNAP transactions form patterns that are substantially different from similar-sized and similarly-stocked stores in the area, persuasive evidence from the Appellant is necessary to demonstrate that there is not something more, such as trafficking, taking place. In an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant has not met this standard.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The Appellant's contentions and evidence do not persuade this review otherwise.

Credit Accounts

The Appellant has claimed that the unusual transaction patterns in this case were not due to trafficking, but rather due to the firm engaging in credit accounts. According to the Appellant, it permitted some loyal customers to shop at the store on credit and then pay the firm back with their SNAP benefits once the households' benefit allotments were replenished. To support this claim, the Appellant submitted 21 handwritten statements from apparent SNAP customers and 17 photos of EBT cards. The photos of EBT cards were submitted without any explanation as to what they meant. As noted earlier, only one of the EBT cards corresponds with any of the handwritten statements. It is assumed then, that the EBT cards represent additional persons who were allowed to shop at the store on credit. The handwritten statements largely have the same message: the customers regularly shop at B & M Mini Mart and the firm extends credit to them so that they can purchase food items and then pay the store back at a later date. The Appellant acknowledges that it should have been truthful at the time it responded to the charge letter, but insisted that it was now being honest and would be willing to accept a lesser punishment for the credit account violations.

It should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

Unfortunately, the documentation provided by the Appellant is insufficient for this review to eliminate trafficking as a key reason for the unusual transaction patterns identified in the charge letter. Based on the written customer statements, it is likely that credit account activity was taking place at the Appellant firm to some degree. But the Appellant's evidence is not nearly comprehensive enough to eliminate trafficking from the equation. For example, none of the handwritten statements indicate specific dates or even a general timeframe for when the credit account activity supposedly took place. The statements also give no indication of dollar amounts or the specific items purchased on credit. The Appellant also submitted no evidence of credit ledgers, which are customary to help a firm keep track of who has been offered credit, how much they have paid back, and how much they still owe.

When a retailer claims that credit accounts are a reason for the irregular SNAP transaction patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have frequently made false admissions of credit accounts in an attempt to obtain a lesser, one-year disqualification penalty instead of permanent disqualification for trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the letter of charges. The evidence provided by the Appellant falls far short of these expectations.

One final note regarding the handwritten customer statements: this review finds such declarations to be largely unconvincing. Customers engaging in trafficking violations are unlikely to admit to such conduct, potentially opening themselves up to administrative and/or criminal charges. On the contrary, experience has shown that SNAP customer statements and affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence otherwise.

In summary, the Appellant's claim of credit accounts and its accompanying evidence are insufficient to persuade this review to conclude that the firm was not engaged in trafficking. Accordingly, permanent disqualification is the appropriate penalty.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify B & M Mini Mart from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be modified or reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, B & M Mini Mart, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged

in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

December 9, 2019