

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

**Briggs Market Inc,**

**Appellant,**

**v.**

**Case Number: C0210077**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Briggs Market Inc. (Briggs Market Inc. or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division 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 USC § 2021 and the 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 June 27, 2018, the Retailer Operations Division charged 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 January 2018 through May 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, replied to the charges on July 11, 2018, and explained that the transactions were normal due to the unique circumstances of the store. After considering the evidence, the Retailer Operations Division issued a determination letter dated July 30, 2018. The determination letter informed Appellant that 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 Appellant was not eligible for a trafficking CMP because 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.

By letter dated August 10, 2018, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions 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 matter asserted is more likely to be true than not true.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

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 § 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**, . . .” (emphasis added)

7 CFR § 278.6(b)(2)(ii) states, inter alia:

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(e)(1) reads, in part:

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

7 CFR § 278.6(i) states, inter alia:

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 THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from January 2018 through May 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions made from recipient accounts.

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.

### APPELLANT'S CONTENTIONS

In its August 10, 2018, administrative review request, and subsequent correspondence dated September 11, 2018, Appellant provided the following summarized contentions, in relevant part:

- Appellant is certain that it has established and implemented and will continue to establish and implement policies, procedures, and programs to prevent any violation of the SNAP.
- Appellant has implemented policies and procedures to train all employees regarding SNAP regulation in accordance with Section 278 of the SNAP including but not limited to 7 CFR § 278.2.
- The owners and key employees are required to read and agree to act in accordance with all relevant regulations.
- Appellant will constantly monitor employee compliance with SNAP regulations and take appropriate actions including employee termination for any SNAP regulations.
- Appellant will invest in an electronic point of sale system to better track inventory and all SNAP related sales.
- Appellant will utilize all available tools and reports to eliminate any possible violation of the SNAP.

In support of its contentions. Appellant submitted a copy of the charge letter, two pages of the regulations at 7 CFR § 278.2, and seven page point of sale proposal.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Briggs Market as a small grocery on November 9, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 4, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions.

The store visit report and photographs documented the following store size, description, and characteristics:

- Briggs Market is approximately 3,000 square feet, with a small storage area with containing non-food items outside of public view.
- The checkout area was small and limited in space with ice cream cooler in front.
- There were shopping baskets and shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was some packages of hot dogs, bacon, cold cuts, and sausage.
- There was a limited selection of fresh meat.
- There was limited fresh produce including onions, tomatoes, limes, and lemons.
- Dairy included milk, butter, sour cream, cream cheese, cheese, and infant formula.
- Frozen food included dinners, chicken, pizza, vegetables, waffles, and shrimp.
- Other staple foods available for purchase were cereal, juice, rice, bread, beans, pasta, and canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included paper goods, cleaning products, housewares, party goods, and hot and prepared food items.

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. However, there were advertised grocery deal packages - \$99.95, \$49.95, and \$35.99; and infant formula - \$33.99. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

### **Charge Letter Attachments**

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 12 sets of transactions that meet the parameters of this scan. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. 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 Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, or significant bulk items for sale. The second and third transactions in each set are too large to consist of forgotten items.

While there are legitimate reasons why a SNAP household may shop at a given store multiple times in a day, the repetitive transactions cited in Attachment 1 is not normal shopping behavior at a convenience store. 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.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 226 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's inventory. The photographs from the store visit indicate that the counter space was small and not convenient for the processing of large transactions. It is unlikely that customers would consider Appellant as a first choice destination to fulfill large purchases of food. Appellant's total SNAP redemptions during the view period was three times the average for small groceries in the county.

Appellant explained that the large transactions were due to the sale of meat and grocery packages. It is important to note that Appellant submitted invoices to support its inventory during the review period. The invoices do not support that Appellant purchased enough stock during the review period to support its SNAP redemptions. The Retailer Operations Division determined that there was not enough meat to create more than 10 of the grocery deals. In addition two of the grocery deals contained 25 pounds of sugar. There was only one bag of sugar available at the time of the store visit. Appellant likely does sell some grocery deal packages but the available evidence does not support that many of these large transaction are due to the sale of grocery deal packages.

The Retailer Operations Division determined that Appellant conducted more SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as compared to the average for medium groceries in Will County during the review period. Appellant is a small grocery. In each 5 U.S.C. § 552 (b)(6) & (b)(7)(C) band the Appellant firm had high dollar transactions greatly exceeding the average for a SNAP authorized medium grocery in the county. This is unusual. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant did not provide a credible explanation for the volume of high dollar transactions given the limited stock of staple foods, and the lack of specialty or ethnic foods that might sell for a high price. The Retailer Operations Division considered this a strong indicator of trafficking.

The Retailer Operations Division compared Appellant to three other small groceries located within a two-mile radius. . Each of the two transaction patterns of Appellant, described in each of the charge letter attachments, exceed the other three authorized stores, as seen on the table herein. The number of transactions meeting this pattern during the review period is irregular. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors.

#### **5 U.S.C. § 552 (b)(7)(E)**

Sometimes a firm may have higher than normal SNAP transactions amounts due to a recipient's lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that there are 27 other authorized stores within a two-mile radius including a supermarket and a super store. The Retailer Operations Division examined four households identified in the charge letter to analyze their shopping patterns at Briggs Market compared to their shopping patterns at other SNAP authorized stores. Despite access to better stocked stores, each of the four households conducted excessively large transactions at Briggs Market within a short time of shopping at a supermarket or super store. Again, it is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

The Retailer Operations Division determined that upon receipt of the charge letter on June 28, 2018, Appellant's unusually large transactions decreased significantly. During the review period, Appellant averaged 60 transactions per month that met the parameters of this attachment. In July, after receiving the charge letter, Appellant conducted 12 unusually large transactions. If the high dollar transactions in the charge letter were legitimate food purchases and grocery deal packages, then there should not be a drastic decrease in its SNAP redemptions following receipt of the charge letter. As such, unexplained and drastic declines in SNAP redemptions as a result of receiving compliance related correspondence are often indicative of trafficking.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

#### **Invoice Analysis**

Appellant submitted invoices of its food stock to the Retailer Operations Division for the months of April and May. Counsel indicated that there was a 25% markup. Counsel also indicated that it only provided about half of all Appellant's invoices. The Retailer Operations Division, in favor to the retailer, calculated the invoices and doubled the amount based on counsel's report

that about 50% of the invoices were missing. In addition, the Retailer Operations Division also used a 50% markup, instead of the 25% markup provided by counsel.

The Retailer Operations Division determined that there was a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) inventory shortfall for the months of April and May when considering that 20% of the stock would be paid with cash or credit. This shortfall in food inventory is likely even greater considering that the store is an authorized WIC retailer and would have also had WIC redemptions. Based on the analysis above, it is likely that Briggs Market did not have a sufficient food inventory to support its SNAP redemptions during the review period.

It should be noted that even if the Appellant store had sufficient food inventory to justify its SNAP redemptions, this would still not explain the irregular transaction patterns described in the charge letter. It is not unusual for a store to conduct largely legitimate transactions while trafficking with a few trusted households. In these cases, a store would have sufficient food inventory but still be liable for conducting trafficking violations.

### **Corrective Action**

Appellant states that it will invest in an electronic point of sale system to better track inventory, but more importantly all SNAP related sales. In addition, Appellant will utilize all available tools and reports to eliminate any possible violation of the SNAP. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant's contention that it will take corrective action to prevent the violations does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Evidence**

FNS utilizes a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which states, inter alia, "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.]

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue.

### **Civil Money Penalty**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i) in lieu of a permanent disqualification. Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. The criteria for a trafficking CMP in lieu of permanent disqualification is defined under 7 CFR §278.6(i) which reads, inter alia:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm....

The Retailer Operations Division determined that Appellant was not eligible for a CMP because it failed to submit substantial information to establish that the firm had an effective personnel training program compliance policy in place prior to the SNAP violations to qualify for a trafficking CMP under 7 CFR § 278.6(i).

With its administrative review quest, Appellant, through counsel, contends that it implemented policies and procedures to train all employees regarding SNAP regulations. Appellant further contends that owners and key employees are required to read and agree to act in accordance with all relevant regulations. In addition, counsel reports that Appellant will constantly monitor employee compliance with SNAP regulations and take appropriate actions including employee termination for any SNAP regulations. This narrative description is not substantial evidence that Appellant met all four criteria required by 7 CFR § 278.6(i).

The record is clear that Appellant did not submit sufficient evidence to establish that Appellant had an effective compliance program and policy in effect 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 § 278.6(i).

### **CONCLUSION**

The Retailer Operations Division's 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 violations in SNAP benefits. 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division 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 was deemed correct and proper.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

December 11, 2018