

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

**Caldwells Quick Stop Grocery,**

**Appellant,**

**v.**

**Case Number: C0208415**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Caldwell's Quick Stop Grocery (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Caldwell's Quick Stop Grocery by letter dated August 7, 2018.

**AUTHORITY**

7 U.S.C. § 2023 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 13, 2018, 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 November 2017 through 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 noted 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).

In correspondence dated June 24, 2018 received July 10, 2018, Appellant replied to the charge letter and generally stated that it never noticed unusual transactions ending in the same cents value because they have not been looking at the transaction tapes. It sells many cold cuts that people ask for in dollar amounts. Appellant indicated that for multiple transactions made from the accounts of individual SNAP households, they have not been asking for identification when SNAP purchases are made and if allowed to continue they will ask for identification. Appellant stated that many households in the area do not have transportation and use the store as the sole source of grocery shopping from time to time, if there is no one available to take them to large stores where they can get better deals. The store has been in operation for over 25 years and has always complied with any rules and regulations governing any services used.

After considering the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated August 7, 2018. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP. Appellant failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated August 15, 2018, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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**

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, in part that, "FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, 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(e)(1) reads, in part, “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 that, “Eligible foods mean: 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)(2)(ii) states, in part, that: “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, 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.”

### **SUMMARY OF THE CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from November 2017 through April 2018. This involved the following transaction patterns, which are trafficking indicators:

1. An unusual number of transactions ended in a same cents value.
2. Multiple transactions were made from the accounts of individual SNAP households within a set time-period.
3. Excessively large purchase transactions were made from recipient accounts.

The first issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the identified irregular and questionable transactions were the result of trafficking in SNAP benefits.

### **APPELLANT’S CONTENTIONS**

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

1. I am requesting a review of the determination that I was not eligible for a trafficking civil money penalty (CMP).

2. At no point did my son, my employee or I ever intentionally, unintentionally, or in any other way, violate the SNAP regulations in an attempt to defraud the system.
3. My store is located in an impoverished neighborhood where the median income borders at or below the recognized poverty level. Most residents do not own vehicles and our store is the closest one that they are able to access on foot.

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

### **ANALYSIS AND FINDINGS**

The FNS authorized the business as a convenience store on February 9, 1981. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a March 19, 2018, store visit to the business 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:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 2013 square feet.
- Approximately five (5) shopping carts and nine (9) shopping baskets available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- Food is stored in an area outside of public view at approximately 1220 square feet.
- Store has storage freezers or coolers but no food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store takes telephone orders but does not offer delivery
- Highest priced eligible food items were cold cereal (\$5.79), Formula (\$17.99), Turkey (\$8.99/lb.) and Cheese (\$5.99/lb.).
- Store stocks a significant amount of non-food items such as but not limited to paper goods, cleaning products, housewares, gift items, party goods, souvenirs, automobile products, and alcohol and tobacco products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Insignificant amounts of fresh fruits or produce. No fresh meat or poultry. Most meats are canned, packaged or frozen.

- Appellant has several empty or broken coolers.
- Several shelves were sparsely stocked or empty.
- A kitchen/prepared food area with hot foods sold for onsite consumption with a microwave available for heating.
- A deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The second issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in 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's store during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge letter – An unusual number of transactions ended in a same cents value.**

There were 168 SNAP transactions that met the parameters of this attachment. When such repetitive patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits.

The store visit documentation indicates that Appellant does not have a special pricing structure that would account for the percentage of transactions that ended in 00 cents. When there is a disproportionate amount of transactions ending in same cent value, it appears the transactions are contrived and absent any compelling rationale, to the contrary it is a strong indicator of trafficking.

Although some of the lower priced transactions in this Attachment may have been for cold cuts requested at even dollar amounts, it is implausible that as the transaction amounts increase that the amount is a legitimate SNAP transaction especially when item prices end with a standard \*9. It is implausible that several of these relatively inexpensive items purchased together would routinely total to a purchase amount ending in 00 cents or that Appellant would consistently round all transactions to a 00 cents value. This would entail sales that were either a gain or loss for the retailer and it is unlikely that SNAP recipients would agree to round prices up to an even dollar amount, essentially paying more for the purchased items. In addition, a store that is rounding prices up or down or an even value would not have any transactions ending in odd values.

**Attachment 2 of the Charge letter - Multiple transactions were made from the accounts of individual SNAP households within a set time-period.**

There were 19 sets of 41 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time-period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. Appellant contends that the store is located in an impoverished neighborhood where the median income borders at or below the recognized

poverty level. Most residents do not own vehicles and the store is the closest one that they are able to access on foot. With regard to this contention, it is important to note that income levels do not provide a clear explanation for the transaction pattern shown in Attachment 2 of the charge letter.

It is also noted, that customers will sometimes forget an item or see something at the checkout and decide to purchase it after they already completed their transaction or return for forgotten items. In such instances, it is reasonable to expect the subsequent purchases to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores, or that the forgotten items would be for a significant amount. Many of the subsequent transactions cited in this Attachment were for amounts that exceed any nominal, afterthought purchase, and in some cases, the amounts of subsequent transactions exceeded the preceding transaction amount. Appellant's inventory and layout do not adequately justify or support the transaction pattern in Attachment 2 of the charge letter.

Additionally, the record reflects that there are at least 35 authorized retailers within a three mile radius of Appellant's store including two supermarkets and one superstores where customers also shopped, demonstrating that they have access to transportation and stores that are better stocked and better able to facilitate large purchases.

**Attachment 3 of the Charge letter - Excessively large purchase transactions were made from recipient accounts.**

There were 184 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. Appellant did not offer, with its review request, any relevant explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 3 of the Charge letter.

It is important to note that when Appellant received the charge letter on June 14, 2018 it's SNAP redemptions decreased by 44 percent. If all of Appellant's SNAP redemptions were legitimate SNAP purchases it is more likely that the SNAP redemptions would have remained constant even after the charge letter was issued. Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Based on the above analysis, the Retailer Operations Division presented a convincing case that the Caldwells Quick Stop Grocery trafficked in SNAP benefits, which the Appellant failed to adequately rebut. The attachments furnished with the charge letter identify the irregular patterns of SNAP transactions, which indicate that trafficking was taking place at the firm during the review period. As there is more than one pattern of trafficking, a determination that the Appellant firm engaged in trafficking becomes more convincing.

## **Conclusion**

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership 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 matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns identified in the charge letter, the lack of food inventory necessary to support the firm's SNAP redemptions as observed and recorded during the onsite visit, the lack of purchase invoices of foods to cover SNAP redemption totals for the review months, the lack of adequate explanations for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

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 for the legitimacy 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. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The owner has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

## **CIVIL MONEY PENALTY**

Appellant requested a review of the determination that it was not eligible for a trafficking CMP. The record reflects that 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 dated June 13, 2018. 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' decision, not to impose a trafficking CMP in lieu of disqualification, is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Caldwell's Quick Stop Grocery. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Caldwell's Quick Stop Grocery is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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 (FOIA), 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.

Monique Brooks  
Administrative Review Officer

February 21, 2019