

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

**Canaan Convenient Store Corporation,**

**Appellant,**

**v.**

**Case Number: C0196937**

**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 Canaan Convenient Store Corporation 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 Canaan Convenient Store Corporation.

**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 August 18, 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 July 2016 through December 2016. 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).

Although the name of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was included on the August 18, 2017 charge letter, according to agency records that individual was disassociated from store ownership on May 22, 2012. Therefore, the administrative action under review applies only to Canaan Convenient Store Corporation under the sole ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In response to the charge letter, the Appellant, through counsel, submitted a letter dated August 28, 2017 that the Retailer Operations Division received on August 30, 2017. The Appellant's letter stated that the irregular transactions were due to the store accepting SNAP benefits as repayments on credit accounts. The Appellant requested a hardship CMP in lieu of a permanent disqualification based on hardship to SNAP customers if the store was disqualified. The Appellant did not request a trafficking CMP under the conditions specified in 7 CFR § 278.6(i).

In response to the Appellant's letter, the Retailer Operations Division issued a letter dated August 31, 2017 requesting "documentation to support that food items were purchased on credit." The letter stated "this documentation must identify specific accounts along with corresponding dates and amounts."

The Appellant replied in a letter dated September 11, 2017. The Appellant stated that the credit records were kept on "chits" which were returned to the customer when the credit was repaid. The Appellant provided copies of four slips containing a first name or description with miscellaneous dollar amounts on each slip. The Appellant again requested a hardship CMP in lieu of a permanent disqualification.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 12, 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 2, 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, *inter alia*:

*... 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, *inter alia*:

**Trafficking** means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food ....

7 CFR § 271.2 states, *inter alia*:

*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, *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.]*

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, *inter alia*:

*(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 July 2016 through December 2016. This involved the following transaction patterns which are trafficking indicators:

**Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

## APPELLANT'S CONTENTIONS

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

- The store engaged in granting credit to its customers. The business maintained a system of “chits” which were redeemed by customers when accounts were settled. Sample copies of chits are enclosed as additional chits were not available due to redemption by customers. The appropriate penalty is a one-year disqualification and not a permanent

disqualification. The owner was unaware that SNAP benefits could not be used to pay off credit accounts.

- Employees have been trained regarding the eligibility requirements for SNAP transactions and there is no evidence that nonqualified items were accepted or cash was exchanged.
- A hardship CMP should be considered in lieu of a permanent disqualification as SNAP customers will suffer if the store is permanently disqualified.

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 Canaan Convenient Store Corporation for the SNAP on June 5, 2012. During the review period of July 2016 through December 2016, the Retailer Operations Division classified Canaan Convenient Store Corporation as a combination grocery store. In March 2017, the Retailer Operations Division reclassified Canaan Convenient Store Corporation as a convenience store.

Store owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed the SNAP application for the store on May 21, 2012 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, and accepting SNAP benefits as repayments on credit accounts.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 14, 2017 store visit conducted by an 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 store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Canaan Convenient Store Corporation is approximately 600 square feet in size and operates out of a shopping strip center in an urban commercial area.
- The store had no shopping carts and no handheld shopping baskets for customer use.

- The store had two (2) cash registers and two (2) point-of-sale devices.
- The store had no optical scanners or conveyor belts at the checkout.
- There was no food stored outside of public view in a storage area.
- There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale.
- The checkout area consisted of two small turnstile window openings within a Plexiglas barrier. On the exterior, there was a small countertop ledge which offered little room to stack purchases. As a result of the limited space at the checkout area, it was not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was more typical of a convenience store with limited staple food stock than a combination grocery. However, for the purpose of this review, the Appellant store will be considered to be a combination grocery store which will be more favorable to the Appellant.

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 tobacco products, lottery tickets, household cleaning products, health and beauty products and general houseware. The store also had SNAP ineligible hot food sales including pizza, hot dogs and hamburger patties.

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.

### **Credit Accounts**

The Appellant states that the irregular SNAP transactions cited in the charge letter are the result of credit repayments. In response to the Appellant's claim, the Retailer Operations Division issued a letter dated August 31, 2017 requesting "documentation to support that food items were purchased on credit" and stated "this documentation must identify specific accounts along with corresponding dates and amounts."

The Appellant replied that the credit records were kept on "chits" which were returned to the customer when the credit was repaid. As documentation, the Appellant provided copies of four (4) slips containing only a first name or description along with miscellaneous dollar amounts written on each slip. The slips did not provide any other identification and did not itemize any food purchases. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as 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 food items.

The Retailer Operations Division determined that the Appellant's response did not adequately refute the trafficking charge. There is insufficient evidence to prove that credit account repayments explain the irregular transactions cited in the charge letter. In conclusion, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions cited in the charge letter are due to repayments on credit accounts.

### **Multiple Transactions 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 combination grocery'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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In fact, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) average transaction is double the average SNAP transaction at a supermarket or superstore in the District of Columbia during the review period. It is not credible that a combination grocery store with limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a superstore or supermarket in the District of Columbia. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

If these transaction sets included a credit repayment, one would expect to see an excessively large transaction followed by a much smaller transaction typical of a SNAP purchase at a District of Columbia combination grocery during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Many of the transaction sets included three (3) or four (4) large dollar transactions conducted within a short time frame.

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 checkout windows and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or 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 combination grocery's stock and facilities and are thus indicative of trafficking.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The substantial number of high dollar purchases atypical of a SNAP authorized combination grocery 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.

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 Canaan Convenient Store Corporation there are 26 SNAP authorized stores. These SNAP authorized stores include six (6) small grocery stores and two (2) supermarkets. A government report on SNAP benefit redemption patterns<sup>1</sup> 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 combination grocery with very limited staple foods like Canaan Convenient Store Corporation.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

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 Canaan Convenient Store Corporation 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 Canaan Convenient Store Corporation often within a few days of shopping at supermarkets and superstores. It is highly unlikely that a combination grocery with limited staple foods would have legitimate SNAP transactions comparable to 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 Plexiglas barrier and small turnstile windows, 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 no shopping carts. Customers purchasing such large quantities of food

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



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 2 are more likely than not the result of trafficking in SNAP benefits.

### **Corrective Action**

The Appellant contends it has taken corrective action by training employees regarding the eligibility requirements for SNAP transactions. 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 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 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 corrective actions implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that corrective action has taken place does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to SNAP Households**

The Appellant states that a permanent disqualification will constitute a significant hardship to the local SNAP community. Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a less than permanent disqualification. However, the regulations at 7 CFR § 278.6(f)(1) clearly state that "a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a **permanent** disqualification." [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted that the Retailer Operations Division determined that there are 26 SNAP authorized stores located within a one-mile radius of the Appellant store including six (6) small grocery stores and two (2) supermarkets. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of Canaan Convenient Store Corporation.

### **CIVIL MONEY PENALTY**

Although the Appellant requested a hardship CMP under 7 § CFR 278.6(a), the Appellant did not 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 Canaan Convenient Store Corporation, 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

November 30, 2017