

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

Capital Heights Mini Mart,

Appellant,

V.

Retailer Operations Division,

Respondent.

Case Number: C0217002

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Capital Heights Mini Mart (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 Capital Heights Mini Mart by letter dated May 22, 2019.

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 April 18, 2019, 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 September 2018 through February 2019. 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 April 24, 2019, Appellant replied to the charge letter and generally stated that the large transactions recorded by the store were due to the store recently offering large, uncooked roasts and meat cut options to the surrounding community. The roasts are higher priced than the traditional food stock. Appellant stated that often times, customers have worn cards or there will be some technical difficulties and the card reader has trouble reading and accepting some cards. The cashier will manually enter the EBT information as opposed to swiping as to not prevent the cardholder from being able to get the food items. As for the repetitive, single-household transactions listed, we found that one of our employees was allowing familiar households to get food items on a tab, if they were without benefits with the intention of them repaying it once their benefits were replenished. This employee has been reprimanded and his schedule reduced so we can better control our compliance with SNAP regulations. Appellant stated that upon receiving the letter, it deemed it necessary to compile EBT training material and post literature at the store to ensure all employees are fully aware of what is expected of them and what consequences await them if they choose to violate these regulations in the future. Appellant asked for consideration of a civil money penalty as retribution for their employee's poor judgement.

In correspondence dated May 7, 2019, Retailer Operations Division informed Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from participation for a period of one year. Please provide documentation to support that food items were purchased on credit as noted in the response provided on May 2, 2019. Please provide the requested documentation and any information, explanation, or evidence you have regarding the charges outlined in our letter on April 18, 2019, within 10 calendar days of your receipt of this letter.

In correspondence dated May 15, 2019, Appellant replied to the May 7, 2019 letter and stated that the employee that extended credit to EBT account holders did not maintain records or receipts of these transactions. Appellant asked that Retailer Operations Division reconsider the firm for a reasonable civil money penalty as retribution for the employee's poor judgement as opposed to suspension

After considering the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated May 22, 2019. 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 May 29, 2019, 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 September 2018 through February 2019. This involved the following transaction patterns, which are trafficking indicators:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. A large number of EBT manual transactions were made from the accounts of SNAP households.
3. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

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. In an effort to prove our willingness to make and enforce constructive changes within our company, we have provided evidence that we are, in fact, retraining our staff and working to better serve the community that benefits from EBT.
2. We used the Retailer Training Materials for SNAP to provide a thorough review of the use and misuse of EBT. Our staff was required to view the training video included in the kit and we had an open discussion of what would and would not be acceptable moving forward. As evidence of this retraining all staff was required to sign their name to verify they did receive the training.
3. We ask that you consider lifting our suspension from receiving EBT benefits. We understand if a civil money penalty must be imposed in its place and ask for you to consider this as an option.

Appellant provided three color photographs and a copy of a document, with five signatures, indicating that staff reviewed the Retailer Training Materials for SNAP provided by the USDA. The document was dated May 28, 2019.

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 September 5, 2017. The file indicates that in reaching a disqualification determination, Retailer Operations Division

considered information obtained during a March 12, 2019, 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 2500 square feet.
- No shopping baskets or carts 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 that is approximately 400 square feet in size.
- Store has storage freezers or coolers but not food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Jack Links Jerky (\$16.59), Milk (\$5.99), Jack Links Jerky (\$8.39) and Folgers Instant Coffee (\$5.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, gasoline, health and beauty aids, gift items, mobile phones/phone cards alcohol and cleaning products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- No kitchen/prepared food area
- Hot foods sold for onsite consumption.
- No 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.
- Appellant was deficient in the dairy product category missing two varieties and six stocking units.

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 – Multiple transactions were made from the accounts of individual SNAP households within a set time period.

There were 16 sets of 39 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's food stock consists mainly of low priced food items. There was no specialty or ethnic foods nor any foods that sold in large packages or bulk. There were no hand baskets and only one cart in which to help customers facilitate large purchases. Appellant's stock and structure does not adequately justify multiple transactions being made in the time frames listed in this Attachment

Appellant did not deny the charges and did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 1 of the Charge letter therefore, 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. It is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge letter - A large number of EBT manual transactions were made from the accounts of SNAP households.

There were 31 manual transactions that met the parameters of this attachment. Manual key-entered transactions are normally used when a retailer is unable to complete a transaction by swiping an EBT card (for example, if the card has a damaged magnetic stripe). However, this is a rare occurrence and the vast majority of SNAP transactions use the swipe method. Therefore, a high number of manual key-entered EBT transactions is an indication that client account numbers and PINs are being purchased in order to run manual trafficking transactions without the card being present.

Appellant did not deny the charges and did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 2 of the Charge letter therefore, 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. It is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 3 of the Charge letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

There were 429 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. The average convenience store transaction in Montgomery County Alabama, during the review period, was \$7.45. Appellant's largest transaction **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is 21 times higher than the average transaction amount for this store type. Additionally, Appellant's total SNAP redemptions were more than five times that of other convenience stores in Montgomery County during the review period.

Appellant did not deny the charges and did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 3 of the Charge letter therefore, 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. It is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 3 are due to trafficking in SNAP benefits.

Based on the above analysis, the Retailer Operations Division presented a convincing case that the Capital Heights Mini Mart 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.

Moreover, the store visit report and photographs document that the Appellant firm was deficient in dairy products. The store visit report tends to indicate that the firm may not have been eligible to maintain SNAP authorization on the day of the store visit.

Summary

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.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns 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

The Appellant requested consideration for paying a fee, as a consequence, in lieu of permanent disqualification. Appellant contends that in an effort to prove its willingness to make and enforce constructive changes within our company, it has provided evidence that it is, in fact, retraining staff and working to better serve the community that benefits from EBT. Appellant was notified in the charge letter dated April 18, 2019, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP.

Appellant failed to provide Retailer Operations Division with the required documentation, as stipulated by SNAP regulations, to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations. It is important to clarify, for the record that the purpose of this review is to determine if the earlier decision of the Retailer Operations Division, to permanently disqualify Appellant from participation in the SNAP, was in fact a correct one. It is not within the scope of this review to consider what subsequent actions Appellant may have taken so that its store may begin to comply with program requirements

CONCLUSION

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Capital Heights Mini Mart. 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 Capital Heights Mini Mart 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

November 5, 2019