

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

**Casandra Grocery Corp,**

**Appellant,**

**v.**

**Case Number: C0100359**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Casandra Grocery Corp (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 May 30, 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 September 2016 through February 2017. The letter noted that the sanction 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). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated September 19, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On September 27, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

### STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating 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, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...a disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & 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(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, in part:

**Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, (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(f)(1) states, in part:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR §278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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...

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

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.

### **SUMMARY OF THE CHARGES**

- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 1).
- In a series of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the majority or all of individual benefit accounts were exhausted in unusually short periods of time (Attachment 2).
- A series of 213 excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

## APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter, and in its written request for review dated September 27, 2017, it was argued that:

1. There is no proof of trafficking contained in the Charge Letter. The cited violations are the weakest that the Attorney for the Appellant has ever seen since doing this cases going back at least 20 years. Three categories of suspicious activity are listed.
  - a. Attachment 1, for same-cents transactions, contains an absurdly low number of "violations."
  - b. Attachment 2, multiple transactions in unusually short time frames, is very difficult to address, not because Appellant has done anything wrong but because the transactions merely reflect human nature. The store is in an urban area in which many customers walk to the store; many live across the street from the store and are not traveling a great distance. There is nothing suspicious about shopping two days in a row. There are only 10-sets of transactions in this attachment, or one and one-half per month over the six month period. The majority occurred prior to the 15<sup>th</sup> of the month, indicating that customers have received SNAP benefits and are spending the money on food.
  - c. Attachment 3 contains excessively large transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There are 213 of these transactions, which is only slightly more than one per day over the 180-day period. Appellant's store not only supplies grocery food items but also provides a large variety of items that might not be found at other stores; the firm sells basic food products such as fruits, vegetables, deli meats and juices. Appellant provided photographs of inventory in reply to the Charge Letter. Appellant provided invoices/product purchase receipts in reply to the Charge Letter.
2. Appellant requests an opportunity to stay in the program and continue to serve provide services to the community. The firm is a rule-abiding business and observes the rules and regulations of the SNAP and under no circumstances would the firm commit any trafficking transactions.

## ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on April 10, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 600 square feet of store space.

- No optical scanners.
- No shopping carts or baskets.
- No evidence of a wholesale business.
- No unique pricing structure – prices in standard retail variations of \$.x9. Photos: 9, 11, 17 and 40.
- One check-out area, one cash register and one card reader. Counter space approximately 1.5 X 2 feet and surrounded by candy, snack food items, over-the-counter medicines and other non-food items. Photos: 3, 14, 16, 37 and 38.
- No food stored offsite.
- Not a specialty food store.
- No telephone or online orders.
- No delivery.
- No food stored outside public view.
- No storage coolers/freezers.
- No transaction rounding.
- Most expensive items:
  - Enfamil - \$18.99 for 12.5 ounce can.
  - Salami - \$17.99 for 2.5 pounds.
  - Pedialyte - \$6.99 for 1.1 quart.
  - Nido - \$5.99 for 12.6 ounce can.
- All above questions completed in collaboration with store personnel.
- The firm also sold tobacco products, alcohol, mobile phones and accessories, health and beauty products, paper goods, cleaning supplies and other non-food items.
- Kitchen/food preparation area present.
- Hot food sold.
- No dining area.
- Deli section present.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Small amount of fresh fruit and vegetables; no fresh meat. Deli meat and eggs only.
- Comments: “No prices posted for Lunchmeats/Cheeses sold by the pound.”
- Typically-stocked small grocery store. Photos: 19, 24, 26, 31 and 32.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1.5 by 2 feet of useable space) but was otherwise surrounded by candy, snack food items, over-the-counter medicines and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small

grocery store in the state of New York during the analysis period was \$11.19, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, Charge Letters are not required by regulation or agency policy to provide investigative techniques/case analysis standards or even to provide a totality of the evidence contained in the case file, but rather to present a firm with transactions the ROD Office has found to be implausible given various considerations and to provide the firm the opportunity to explain how such transactions may be legitimate. The record reflects that the ROD Office has provided a lengthy and comprehensive case in support of its sanction determination, as is discussed in further detail herein. Appellant asserts that the substance of the ROD Office's case against the firm is derived from data only and implies that there were no independent witnesses to affirm the trafficking allegations. 7 CFR §278.6(a), noted above, establishes the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. Such cases are developed with the standard in mind that a *prima facie* preponderance of evidence is sufficient in order to charge a firm with SNAP-benefit trafficking. Various statistical tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (small grocery stores, in this case) in the state of New York. As noted, the record contains documentation, including photographs of the firm's interior and exterior, an inventory survey and a layout diagram, of a visit to Appellant's firm conducted on April 10, 2017. These documents reflect the firm to have been a typically-stocked small grocery store.

This and other data presented the ROD Office with a statistically valid *prima facie* indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the ROD Office does not contend that the EBT (electronic benefits transfer) transactions detailed in its Charge Letter are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns on a consistent and comparative basis over substantial periods of time such activity is identified for further analysis. Only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these procedures are shown by the record to have been duly performed in all relevant and appropriate detail. Moreover, as noted above, the regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store *on the basis of evidence obtained through a transaction report under an electronic benefit transfer*

*system*; consequently, transaction data as a basis for the charges at issue is as valid as evidence obtained through an undercover investigation. ROD Offices are not required to apply any other standard, including an evaluation of case law, than that described herein. Accordingly, the case against the firm is not reflected by the record to lack evidentiary value or to fail to adhere to established investigative methodology, but rather to be comprehensive, analytic, logically derived and specific in its charges of SNAP benefit trafficking, an egregious violation of the Act and the regulations, as noted above.

Furthermore, the case presented by the ROD Office does not rest solely upon transaction data and printouts thereof and was indeed obtained through a formal investigative process. As summarized herein, the record contains a comprehensive array of documentation and analytical work well beyond the data presented in the Charge Letter. The transaction data is indeed factual and specific, the existence and accuracy of which is not in dispute; redundant systems confirm numerous data points for each transaction including the date, time, store authorization number, terminal ID, amount transacted, prior balance and other particulars. It is worthwhile to restate as well that, as noted above, in appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed; Appellant must provide a preponderance of evidence 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. In the absence of compelling information/documentation weighed in comparison to that provided by the ROD Office, the evidence preponderates in favor of the ROD Office's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

It should be noted as well that while the ROD Office is required to consider and evaluate all evidence and responses that are provided by the retailer in accordance with 7 CFR § 278.6(c), the agency is under no obligation in the determination letter to expound, point-by-point, on every contention or piece of evidence presented. The Determination Letter clearly states that consideration was given to the information and evidence available to the ROD Office and to the replies made by the Appellant. After an evaluation of all information, the ROD Office determined that the violations cited in the charge letter had occurred at the firm. Implied in the letter is the determination that the evidence or response by the Appellant was either not credible or was insufficient to prove that trafficking had not occurred. While the determination letter may not have been as comprehensive as the Appellant would prefer, this review finds that due process was appropriately provided and that there was no negligence on the part of the ROD Office with regard to the manner in which it explained its disqualification decision.

Lastly, SNAP authorization is an administrative privilege, granted upon initial and continued proof of eligibility and compliance with the governing rules and regulations, and not an unencumbered right or entitlement, and does not extend said privilege in perpetuity when a firm is at least once granted a license to participate.

USDA has the obligation to safeguard the public's trust and financial interest and labors to do so by operating the program in accord with the statute enacted by Congress and the regulations promulgated by USDA to implement the provisions thereof. Within this context, while due process is honored, the agency is not burdened with proving to Appellant's satisfaction that FNS has correctly imposed the sanction at issue, but rather it is Appellant's burden to demonstrate that it has not engaged in SNAP-benefit trafficking by presenting a preponderance of evidence of same. As such, contentions that the agency hasn't proven its case are a largely irrelevant and ineffective means by which to demonstrate that Appellant has not engaged in violative activity. While errors on the agency's behalf are indeed relevant and must be addressed, corrected and can result in a reversal during administrative review, an Appellant must focus a substantial amount of its probative efforts on explaining why the transaction activity at issue is in fact not due to SNAP-benefit trafficking.

Regarding contention 1a above, Appellant notes that Attachment 1 contained multiple transactions made in unusually short timeframes and involved same-cents transactions; however, the attachment focuses on the former transaction type only. It is acknowledged that the attachment contains a small number of transaction sets, yet without a compelling explanation or rationale for them the transactions remain highly implausible. It is reiterated that the average transaction in a small grocery store in the state of New York during the analysis period was \$11.19.

While there are legitimate reasons why a SNAP recipient or household member might return to a small grocery store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked small grocery store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Moreover, the record further reflects that Appellant's number of repetitive transactions during the analysis period was from six and one-half to 26 times that of three nearby SNAP-authorized stores (all small grocery stores from within a one-third mile radius of the Appellant firm). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically-stocked small grocery store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.



Regarding contention 1b above, similar to Attachment 1, the ROD Office compared Appellant's number of balance depletions (Attachment 2) during the analysis period to three nearby comparable firms (all within one-third of a mile of the Appellant firm and all also carrying a comparable or superior food inventory) and found that only the Appellant firm conducted such transactions during the analysis period. Accordingly, if human nature explains the activity at issue, it would likewise apply to transaction activity at other similar or better-stocked stores in the area during the same period.

While SNAP recipients do expend more benefits in the first two weeks following benefit issuance (New York issues SNAP benefits based on household case number during the first nine days of each month), FNS studies<sup>1</sup> more importantly reflect that almost 85% of SNAP benefits are spent at supermarkets and super stores (with just under 2% spent at small grocery stores). Transactions at small grocery stores and convenience stores are more frequent but substantially smaller. As noted, the average transaction at a small grocery store in the state of New York during the analysis period was \$11.19, indicating that large purchases are not routinely made at such stores and, as such, depletions of entire SNAP balances soon after benefit issuance are likewise not routinely conducted at such stores.

Attachment 2 contains instances in which SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week following benefit issuance. It is highly implausible that customers would desire, or be able, to regularly conduct large transactions which deplete balances to within pennies of a zero balance. A particular combination of groceries priced in particular ways is required in order to arrive at preplanned totals, is difficult to do without a calculator and, as such, is very uncommon. The likelihood that these transactions were the result of the legitimate sale of eligible foods only is extremely small. Additionally, this same study of SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 79 percent of a household's allotment remains unspent. After seven days 41 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 79 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Depleting one's entire allotment in one or two days during the first week following benefit issuance, in a single large transaction or in a series of high cumulative transactions in a short period of time, especially in a typically-stocked small store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to divert attention to signs of same.

---

<sup>1</sup> U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

With regard to contention 1c above, the transactions in Attachment 3 are multiple times the average SNAP transaction during the analysis period in small grocery stores in the state of New York; moreover, these transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, not an insubstantial amount. The store visit reflected that the firm was a typically-stocked small grocery, yet the number of the firm's excessively large transactions was multiple times that of three nearby comparable or better- stocked firms within a one-third mile radius. The ROD Office further notes that customers conducting implausible transactions at the Appellant firm were also shopping at much better- stocked super stores and supermarkets on or about the same day, calling into question what these customers could obtain at Appellant's typically stocked small grocery that they could not obtain at the much better-stocked and very likely more competitively-stocked stores (super stores and supermarkets are typically the most competitively-priced firms in a given area).

The ROD Office conducted an exhaustive analysis of the product purchase invoices/receipts provided by Appellant; this analysis is herein affirmed as correct and accurate. Many of the invoices were dated outside the analysis period; others were illegible, undated, did not identify the vendor, did not identify the buyer or identified a buyer other than the Appellant firm. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Both the countable and non-countable invoices total **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with mark-up, which is substantially short of justifying SNAP redemptions during the same period. This shortage is almost certainly understated as well, as the figures do not account for cash and commercial credit/debit sales, of which the Appellant firm surely had some substantial amount during the analysis period.

Photographs provided by Appellant are undated, appear to have been taken after the firm's receipt of the Charge Letter and, as such, constitute an unreliable reflection of inventory held at an earlier time; nonetheless, the photos do not differ substantially from the nature and extent of inventory seen during the store visit referenced above and having occurred on April 10, 2017. As noted, that inventory indicated that the firm was a typically-stocked small grocery store in all relevant respects.

In regard to contention 2 above, there is no provision in the statute, regulations or agency policy allowing a probationary period in lieu of a permanent disqualification for trafficking. Likewise, no provision exists which allows assurances of future compliance to reduce or reverse a correctly imposed sanction. 7 CFR § 278.6(e)(1)(i) states that the SNAP Office shall disqualify a firm permanently if personnel of the firm have committed trafficking violations. Accordingly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty, which the SNAP Office appropriately withheld since the Appellant did not request consideration for same and did not provide sufficient evidence to demonstrate that it had established and implemented an effective

compliance policy and program to prevent violations of the SNAP, in accordance with 7 CFR § 278.6(i).

Notwithstanding Appellant's denial that no trafficking occurred, the evidence in the case preponderates toward a finding that SNAP-benefit trafficking substantially produced the transaction data detailed in the ROD Office's Charge Letter.

### **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the provisions of the Freedom of Information Act (FOIA), 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.

DANIEL S. LAY  
Administrative Review Officer

May 25, 2018