

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

City of Love Karen Market #1,

Appellant,

v.

Case Number: C0201748

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 City of Love Karen Market #1 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 City of Love Karen Market #1.

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 October 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 February 2017 through June 2017. 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).

The Appellant, through its accountant, responded to the charges in a faxed letter on October 25, 2017. Among other contentions, the Appellant generally stated that the store served the Karen community in the area which allegedly consisted of large families who did not speak English. The Karen community allegedly make bulk purchases of food due to a lack of transportation and access to similar stores. The Appellant provided a spreadsheet which provided purported transactions of taxable and non-taxable sales from January 2017 through June 2017. The spreadsheet did not break out SNAP sales from cash and credit card sales. The Appellant did not request a trafficking CMP within the 10-day timeframe after receiving the charge letter.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated November 15, 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 November 21, 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, 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(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, in part:

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

7 CFR § 271.2 states, in part:

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, in part:

*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, 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.

7 CFR § 278.6(b)(2) states, in part:

*(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]*

*(iii) **If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.** [Emphasis added.]*

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from February 2017 through June 2017. 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. This attachment lists 31 sets of 62 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 156 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

APPELLANT'S CONTENTIONS

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

- The store serves the Karen community in the area which consist of large families who did not speak English. The Karen community makes bulk purchases of food due to a lack of transportation and access to similar

stores.

- The Appellant has provided records of taxable and non-taxable sales and daily receipts from January 2017 through June 2017.
- Food costs are high today and two (2) shopping carts of food could easily add up to high dollar transactions.
- The store does not ask customers why they purchase such large amounts of food, as long as they have enough funds the store will sell them food. If the USDA does not want large transactions, the store will tell customers to make smaller purchases and come back later.

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 City of Love Karen Market #1 for the SNAP on June 17, 2014. The owner signed the SNAP application for the store on April 17, 2014 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.

During the review period of February 2017 through June 2017, the Retailer Operations Division classified the store as a small grocery store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 31, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store'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:

- City of Love Karen Market #1 is approximately 966 square feet in size.

The store had narrow aisles and there were some boxes on the floors which partially obstructed movement through the aisles.

- The store had no shopping carts and only eight (8) handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have any optical scanners or conveyor belts at the checkout.
- There was a small storage room with food outside of public view. Store personnel confirmed that there was no food stored offsite.
- The store sold Asian international food, but did not appear to have any large bulk foods for sales. The store did not sell any expensive items such as fresh meat bundles, seafood specials, and/or fruit and vegetable boxes.
- The checkout area consisted of small glass display case and countertop with a cash register. The counter top was cluttered with miscellaneous items. The limited space at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods including Asian and international food products, grains, sauces, snacks, and rice sacks. There was no fresh meat and only a limited amount of prepackaged frozen meat. There was only a limited amount of prepacked fresh vegetables. The store also sold snack foods and accessory food items such as coffee, tea, condiments, and spices. The stocked ineligible items included health and beauty products, household items, gifts, cleaning products, paper goods, party items and souvenirs.

Store personnel confirmed that the most expensive item sold by the store was a box of canned fish at \$120. However, the store did not appear to stock this item in large quantities. The next most expensive item was six (6) cans of infant formula at \$113.94; however, as the store was WIC authorized, this item would likely be purchased with WIC vouchers and not SNAP benefits. A 50 pound bag of rice sold at \$38.99, but it is unlikely that a family would purchase these bags in large quantities due to issues of spoilage and storage.

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 offering similar food items.

Bulk Sales

The Appellant generally states that many of the transactions cited in the charge letter were due to bulk sales. However, the Appellant did not provide any evidence such as itemized cash register receipts and store purchase invoices to support that the store sold food in bulk. As noted in the store visit report, there was no

evidence of any bulk food that would normally sell for a high price to explain the irregular transaction patterns cited in the charge letter.

Multiple Transactions by the Same Household 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 small grocery store's stock and facilities and are thus indicative of trafficking. The Appellant did not offer any explanation for the irregular transaction patterns in Charge Letter Attachment 1.

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. Charge Letter Attachment 1 lists 31 sets of 62 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(7)(E)**. It is not credible that a small grocery store, even one with Asian or international food would have suspicious SNAP transactions many times greater than a superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Regional Operations Division also compared the Appellant store's irregular SNAP transactions with those of three (3) nearby competitor store that offered similar or superior Asian international food. None of these stores had irregular transaction patterns like the Appellant store.

Several of the transaction sets consisted of multiple large dollar transactions **5 U.S.C. § 552 (b)(7)(E)**. The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. This would also have to be accomplished without an optical scanner or conveyor belts at the checkout and without the benefit of shopping carts.

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. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts 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 small grocery store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 156 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The Appellant states that food costs are high today and two (2) shopping carts of food could easily add up to high dollar transactions. Regarding this contention, it should be noted that the Appellant store did not have any shopping carts for customer use making large transactions at the store more unlikely. While it is true that a store selling Asian or international food might have average SNAP transactions higher than a typical small grocery store, three (3) nearby competitor stores selling a similar or superior amount and quality of Asian food did not exhibit the same excessively large transactions as the Appellant store. 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.

The Appellant states that The Karen community shops at the store almost exclusively due to a lack of transportation to other stores. However, the Retailer Operations Division determined that 45 households who shopped at the Appellant store also shopped at a supermarket or superstore within a day of shopping at City of Love Karen Market #1. The Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at City of Love Karen Market #1 compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets, superstores or other Karen or Asian food stores with comparable or superior stock. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at City of Love Karen Market #1 often on the same day or within a day or two of shopping at these other stores.

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 limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. 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.

Sales Data and Receipts

The Appellant's accountant submitted a spreadsheet showing non-taxable sales, taxable sales, gross receipts, total purchases, and sales taxes by month from January 2017 through June 2017. However, this information does not distinguish between SNAP transactions, WIC transactions, cash transactions or credit cards sales. Nor do they do provide any explanation for the irregular SNAP transactions cited in the charge letter.

The Appellant submitted original register receipts from the review period showing individual EBT transaction amounts, credit card and debit card amounts. However, none of these register receipts show what was purchased with SNAP benefits. There are no itemized cash register receipts showing that the SNAP transactions cited in charge letter were for eligible food items only. As a result, the sales and data and purchase receipts are of no probative value in the case and do not explain the irregular transaction patterns.

CIVIL MONEY PENALTY

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. 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 City of Love Karen Market #1, 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

February 12, 2018