

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

Cottage Grove Mart,

Appellant,

v.

Case Number: C0219887

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The record supports that the Cottage Grove Mart (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c), and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated September 11, 2019, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification. The owner, responded to the Charge letter, by letter dated September 17, 2019.

Retailer Operations issued a Determination letter dated September 24, 2019. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c), and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated September 30, 2019, the owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated November 15, 2019.

STANDARD OF REVIEW

In an appeal of an adverse action, the Appellant 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 credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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

7 CFR § 278.6(e)(1) states: "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: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "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."

7 CFR § 278.6(b)(2)(ii) states: "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: "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 issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of December 2018 through May 2019. The patterns of transaction characteristics indicative of trafficking are:

- Multiple transactions were made from individual benefit accounts within a set time period.
- Large transactions based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented, including any not referenced.

- I have never done anything to violate the SNAP regulations nor have I ever thought to do so.
- I can safely say that 60% of customers are regular customers that I see often. Of those customers, more than 30-40% are individuals with EBT cards. Right across the street from my store is an apartment for low-income housing. These individuals are regular EBT customers.
- These customers do not have any means of transportation, coupled with the fact that we are located in a neighborhood with many homes, situates us as a prime spot for them to shop.
- The transactions that you see as irregular are regular occurrences. There is a transaction listed on March 3, 2019. He is a Jamaican American with ten kids. Of all my customers, there are few who spend more than \$100, which is why it is easy for me to point out those who do, such as this man. Every time he comes in, he brings six of his ten children who choose which food items they want to purchase. These include frozen pizzas that are \$15 a box, five frozen burritos that are \$6 a piece, gallons of milk and juice, bread, candy, etc. These items can easily and quickly add up due to the frequency of the visitation as well as the number of items purchased. Every time he comes in, he easily spends a high dollar amount for his family.
- There are also many occasions where customers come in multiple times a day. These can be customers who have EBT and also those who don't. They may come in to purchase something and leave, but only to come back later in the day because they forgot something.

- My store is more than just a gas station, it is a grocery store. For those who don't have means of transportation and due to the location, it is a popular and convenient destination for many to shop.
- Right next to my store is also a grocery store. Unfortunately, they do not have access to EBT transactions as I believe they lost their privileges due to violations. Because we are aware of that information, we are more cautious when it comes to our own EBT customers and making sure we are following the rules and regulations.
- Neither I nor any of my employees have the intern [sic] of cheating or violating the rules. We know that we have more to lose and nothing to gain by partaking in any activity that would lose our participation in SNAP.
- Everything I have said written in complete honesty and in the best of my knowledge. I am sincerely apologetic and devastated that this has become a topic of concern.
- I am confident that I adhered to regulations. This establishment has not violated or participated in any illegal activities while participating in the Snap. This establishment values the rights to participate in this program and admit that our record keeping may not be up to standards to protect us from any illegal allegations however I will demonstrate and explain how to change that if we are able to continue with the SNAP program after this matter is cleared.
- A mental health living facility makes up at least 30% of our monthly SNAP revenue. These customers have limited mobility; some have medical reasons which makes it complicated for them to be able to travel outside of our neighborhood. Another matter that has impacted our establishment is the growing homeless population which has brought transients into our neighborhood and we have gained many new customers.
- If we are eligible after reconsideration we will be saving our SNAP transaction receipts and our POS system receipts and will review these on a monthly basis to ensure that we are Following Regulations. Each of our employees will be trained and held accountable for each transaction made to uphold the SNAP regulations and standards.
- We will reach out to our customers and figure out a way to better serve them and stay within the standards of the SNAP.
- Some of our transactions reflecting the information provided as evidence in the receipt contains items that are new to the establishment, in these cases employees are to manually enter the items as grocery non taxable and taxable by law. Then transactions are to be exempted or ITEMS will be exempted that are SNAP eligible.
- We have provided limited September evidence. Our customer has allowed us to share her receipt and name information on her purchases; we have forgotten to exempt her tax accountability in realizing so once the Transaction was complete, she Requested that we provide her with one candy bar at 1.99 instead of Redacting her transaction & starting over as she was suffering from a severe panic attack.
- Speaking to the director at the Cottage Grove Commons and other customers in Our Neighborhood They are willing to contact in form of a Signature providing email/phone/ address for Contact if needed.
- We would like to continue providing a place for our customers to shop without having to travel outside of our neighborhood or to a neighboring store which charges more for necessities that do not meet their monthly budget.
- We will implement an effective compliance policy to uphold our regulations for SNAP and will better keep record of all our transactions.

The owner provided a photo of a cash display, and two itemized cash tape receipts.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked 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 during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Attachment 1: Listed are 45 transactions in 19 sets conducted by 15 unique households (HHs). The store is typed as a convenience store. The data shows that there are six other authorized SNAP retailers within a one mile radius of Appellant, including one super store. Appellant had more data sets flagged on this Attachment than three nearby convenience store comparators that had 1, 7, and 0 data sets flagged respectively. The data also supports that 40% of the HHs listed on this Attachment shopped at a supermarket or super store within two days of making a transaction(s) at Appellant. So recipients did access and use larger authorized retailers to transact SNAP benefits. Retailer Operations determined that Appellant's activity was unusual and suspicious.

Most of the stock seen in the FNS photos taken during the onsite visit of June 15, 2019, appears to be accessory foods such as snacks and beverages. There were no noted or observed fresh produce, fresh meat or specialty or ethnic items in the store during the FNS-contractor's onsite review. The owner's own reauthorization application of 2018 shows that he estimated that 58% of his total sales were for gasoline, 26% of sales were for tobacco products, alcohol, lottery and other non-food items. The application shows the owner estimated only 5.5% of his sales in staple foods, and 9% of sales in accessory foods. He also noted hot food sales. Hot food is not allowed for purchase with SNAP benefits.

Retailer Operations found that there were no promotional, special, bulk, or package deal offers advertised at Appellant. There was a checkout area with one cash register, and one point-of-sale device. There were no scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. The store visit report notes that there were no shopping carts for customer use, and there were two handheld baskets for recipients to transport food items that would total to the high dollar transaction amounts listed on the Attachments. Retailer Operations had no way to verify that a SNAP recipient had many children as described by the owner. Based on the HH number, Retailer Operations verified that the household also shopped at three different super stores during the review period. This indicates that the HH did not depend on Appellant for their grocery needs and that the HH did have access to better stocked stores. Retailer Operations determined that the items mentioned by the owner were not noted in the store visit report. The owner stated that a customer's children chose frozen pizza priced at \$15 and frozen burritos priced at \$6. The onsite store visit report indicates that frozen pizza was priced at \$12.99, and there is no evidence to support the stated burrito pricing. The store visit photographs do not show these prices and the owner provided no food price list.

Two itemized cash register tapes to support the contention of legitimate SNAP food sales to recipients were advanced. However, each tape is dated in September 2019, outside of the review period. While most items as listed, some of the higher dollar items are not detailed showing only “GROCERY” as the items purportedly sold. Thus, the higher dollar receipt provided by the owner does not enumerate that each item listed was an eligible food item.

No recipient statements were provided to support the contentions regarding the shopping habits of SNAP recipients at Appellant. Retailer Operations compared Appellant with three nearby authorized convenience stores and determined that none of the nearby convenience stores had anywhere near the number of transaction flags recorded as Appellant on this data pattern. No vendor invoices were provided to support that Appellant stocked adequate eligible foods to cover its SNAP redemptions for the review period. No federal or state business tax returns, or banking statements were provided. The owner has not provided a preponderance of evidence to support his position.

Attachment 2: Listed are 114 transactions conducted by 47 unique HHs for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. The data shows that 60 percent of the households flagged on this Attachment conducted a transaction(s) at a supermarket, or super store within two days of making a transaction(s) at Appellant. Appellant had many more flags on this Attachment as compared to three nearby same type convenience stores. As compared to three nearby convenience stores, Appellant’s SNAP dollar volume was 67% to 5 U.S.C. § 552 (b)(7)(E) higher, and its average SNAP transaction amount was 16% to 34% higher. Appellant had 5 U.S.C. § 552 (b)(7)(E) higher SNAP dollar volume than same type stores in the state, and 5 U.S.C. § 552 (b)(7)(E) higher SNAP dollar volume than convenience stores in King County. Appellant had a 17% higher SNAP average transaction amount than convenience stores in King County, and 21% higher than the same type stores in Washington. This is unusual.

The onsite store visit report confirms that Appellant did not sell fresh meats, seafood, produce other than bananas, have an onsite bakery, specialty and ethnic items, or staple food items that would reasonably classify it as anything but a convenience store. The store report indicates there were two handheld baskets and the sole shopping cart seen was in the back, not apparently for beneficiaries to gather items that might total to large dollar transaction amounts of eligible foods. The onsite visit noted that Appellant had broken freezer doors, water coming out of freezer onto the floor, had electrical cords taped to the floor posing a tripping hazard, the freezers in the storage room were not working properly, the freezer walls were covered with ice, and the reviewer noted a mouse moved across the sales floor. Nonfood, SNAP ineligible items included: tobacco products, alcohol, gasoline, health and beauty aids, cleaning products, and paper goods. The record supports that this is a gas station convenience store that offered a selection of snacks and beverages, as well as a limited variety of canned, packaged, and frozen foods. Retailer Operations found it more likely than not that the large dollar transactions were indicative of trafficking.

The data supports that there are authorized stores nearby that had comparable or better staple food stock, and that households listed on the Attachments did utilize these other retailers.

Retailer Operations conducted a review of several households' shopping patterns at Appellant. These show that HHs made transactions at several supermarkets and super stores on dates proximate to or on the same date as conducting lower dollar SNAP transactions at these larger venues. This is suspicious, particularly as Appellant carried limited staple foods.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. No vendor invoices of eligible items acquired in inventory that covered Appellant's SNAP redemption dollar volume were provided. The owner provided no itemized cash register tapes for the review months. No listing of eligible foods with pricing was advanced. No federal business tax returns or state tax filings were provided, and no business banking statements were submitted. No recipient affidavits were offered in evidence as to shopping behaviors at the firm. Thus, the owner has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

The regulations at 7 CFR § 278.6(a) state 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, and that 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. As noted herein, Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed at the cited regulation are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The record reflects that the owner did not submit evidence in support of a CMP in lieu of permanent disqualification. Given the lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the program in support of a CMP, the owner did not meet the criteria for a CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and household shopping analyses that provided substantial evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on empirical data, and in the absence of evidence of the legitimacy of the transaction patterns presented by Appellant, the preponderance of the evidence supports that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this decision. If 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 Appellant's owner resides or is 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, 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.

M. Viens
ADMINISTRATIVE REVIEW OFFICER

December 18, 2019