

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

**Deli Five Stars,**

**Appellant,**

**v.**

**Case Number: C0205440**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Deli Five Stars (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, 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 its 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 February 13, 2018, 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 replied to the Charge letter February 20, 2018. Retailer Operations issued a Determination letter dated March 29, 2018. 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 SNAP regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP 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 postmarked April 5, 2018, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated April 16, 2018. The owner provided another letter dated April 24, 2018.

### **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 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 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 is to be submitted within ten days.

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 June 2017 through November 2017. The patterns of transaction characteristics indicative of trafficking are:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
3. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT'S CONTENTIONS**

The following may represent a summary of the contentions however, in reaching a decision, attention has been given to all contentions presented, including any not specifically referenced.

- Customers like to buy whatever they need on sale.
- Customers can buy whatever they want as grocery and I can't prevent customers from buying.
- After I process the transaction customers add another order or item to buy and sometimes customers come back to make purchases.
- Customers come to my store to do all of their shopping. Customers like my catering.
- I didn't do any kind of violation in my store. If you compare the attachments with all transactions made you will know my store has been selling a lot of catering and frozen meat since I open in 2012.
- I do have new and steady customers. I just sell my product to the customer U can ask the customer about their purchase as well all transactions is valid and SNAP card available the time of transaction [sic].
- I said the true that's what happen [sic] exactly in my store.

- I didn't do anything against SNAP benefit. I understand the rules and I respect it. I respect the customers. They can buy what cover them to eat until the end of the month and I understand the benefit for people to cover their hunger.
- I buy most the item and sell it for almost wholesale price to make customer like the price and the store to buy more. I didn't get much profit.
- Every customer has favorite store they shop from in regular basis. We open 7 days a week.

## 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 20 transactions in 10 sets of two or more transactions conducted by five different households (HHs). The data shows that on the same day they conducted a transaction at Appellant, 60% of the HHs flagged shopped at a super store, supermarket or large grocery. Within one day of conducting a transaction at Appellant, 80% of the HHs shopped at a larger store. Thus, there were other authorized stores available to recipients who frequented Appellant.

The onsite report indicates there were no handheld baskets or shopping carts to assist recipients with the collection and movement of large volumes of items in the store that might total to high dollar amounts. Retailer Operations noted the checkout area was limited and cluttered with items, making the logistics of large dollar transactions challenging. Further, Appellant has an onsite kitchen and offers hot food items and has a posted menu of numerous hot food items. Hot foods are not eligible for purchase with SNAP benefits. The record shows that the owner was previously term disqualified by FNS in October 2014 for the sale of ineligible items.

On appeal, the burden rests with Appellant to provide a preponderance of evidence to reverse a decision. The owner did not provide statements from recipients attesting to this type of shopping pattern. No pricing information was advanced for review and no vendor invoices were provided to support the stock of eligible food acquired by Appellant during the review period. As such, the owner has not by a preponderance of the evidence demonstrated that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than trafficking.

**Attachment 2:** Listed are 15 transactions conducted by five households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The data shows that located within a one mile radius of Appellant that there are 47 authorized retailer stores including: 28 small grocery stores, two large grocery stores, seven medium grocery stores, five supermarkets, and five super stores. One super store is located 0.08 miles from Appellant. As such, SNAP beneficiaries have a variety of authorized stores at which to redeem benefits. The owner provided no recipient affidavits to support why the recipients flagged choose to expend their benefits at Appellant.

**Attachment 3:** Listed are 93 transactions conducted by 21 different households  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations also noted that without any shopping carts or shopping baskets for recipients to shuttle large amounts of grocery items to the checkout counter, the large dollar transactions are suspicious. The record supports that the checkout area was cluttered and rather limited to process such high dollar transactions. The store survey confirmed the firm did not sell any pre-packaged meat specials or bundles to support the suspicious transactions. The owner stated that customers like his catering. Regarding this response, the high priced party platters noted in the store report were not seen in the onsite store visit photos. Apparently the assorted party trays were made on request by customers. Retailer Operations noted that the menu sign did not make any mention of party trays. Insufficient evidence was advanced by the owner to support the price or sale of party trays.

It is Appellant's burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same. An Appellant that seeks to set aside an agency sanction must focus its probative efforts on providing evidence by a preponderance that the transaction activity at issue is in fact not due to SNAP benefit trafficking. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious in the Attachments provided with the Charge letter. This burden has not been met.

While some households may have conducted legitimate transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided no vendor invoices of eligible items acquired to support Appellant's SNAP redemptions. The owner provided no itemized cash register tapes for the review months, or pricing information that was not cited in the store report. No SNAP customer statements were provided to support that the transactions listed were for eligible foods. No federal business tax returns or state tax filings were advanced, and no banking statements were provided. 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.

### **CIVIL MONEY PENALTY**

The owner did not submit documentation to prove that Appellant met the trafficking CMP requirements as stipulated in the regulations at 7 CFR Section 278.6(i). These regulations specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the regulations.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Based on the data and in the absence of a preponderance of evidence of the legitimacy of the transactions on the Attachments, by a preponderance of the evidence, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was 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 a judicial review of this decision. 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 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

June 1, 2018