

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

**Deli Store,**

**Appellant,**

**v.**

**Case Number: C0212604**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that the Deli Store (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 October 19, 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 responded to the Charge letter via a letter and information dated October 29, 2018. Retailer Operations issued a Determination letter dated December 12, 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 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 email dated December 17, 2018, the owner requested administrative review of Retailer Operations' determination. The appeal was granted by letter dated February 4, 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 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 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 February 2018 through July 2018. The patterns of transaction characteristics indicative of trafficking are:

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

### **APPELLANT’S CONTENTIONS**

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

- My store is small and doesn’t have enough space for shelves to store many products onsite. I take pre-orders from my clients directly.
- By the orders received, store employee will go to wholesale stores to make purchases and pack the food and drinks in boxes by each other. After orders are ready, large orders will be delivered; also clients will come to pick up by themselves. Most orders are repetitive monthly or semi-monthly.
- EBT card holders come in for pre-orders. They know how much they receive and most of them are for pre-orders. They will place orders for food and drinks which is close to the full balances on their cards.
- For everyone’s convenience, I usually round up or down the amount to dollar.
- Each month I purchase around 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of goods from wholesaler and most of them are for pre-orders. The purchases are mainly made from Jetro Cash & Carry and AAA Wholesale.
- In order to get the details, I will need to submit an application to their headquarter and it might take about 3 to 4 weeks to process.

- I can provide credit card statements which show daily purchase history I made from wholesale stores during February 2018 to July 2018.
- While the store is under investigation, I stop taking pre-orders.
- I keep the SNAP Training Guide in store and go over with any new hires. I keep a copy of the SNAP Training Guide video in store and they are required to watch. I have SNAP EBT Do's and Don'ts posted next to the cash register.
- Neither I nor the employees benefit from the use of any SNAP acceptance.

The owner submitted a letter from Jetro Cash & Carry and a list of items purchased from AAA Wholesale for the period of February 1, 2018 through July 31, 2018. Additionally, the owner submitted a photos of SNAP posters and the cover of the USDA SNAP Training Guide.

### 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 37 transactions in 17 sets conducted by nine unique households (HHs). Multiple transactions within a set time period are a method stores use to avoid high dollar transactions, and are indicative of trafficking.

The record confirms that there are at least 180 authorized stores within a one mile radius of Appellant including 48 small grocery stores, 19 medium grocery stores, five large grocery stores, eight super stores, and ten supermarkets. The data supports that 44% of the HHs listed on this Attachment shopped at a large grocery, a supermarket, or super store on the same day of making a transaction(s) at Appellant. Thus, recipients had access to and did use other larger shopping options to transact SNAP benefits.

Retailer Operations determined that Appellant had more sets of transactions flagged on this Attachment's parameters than three other convenience stores located in proximity to Appellant. Appellant had 17 flagged data sets while the three other convenience stores had one, three, and seven flags respectively. Thus, Appellant's activity was unusual and suspicious.

No detailed vendor invoices to support the acquisition of SNAP eligible foods were advanced from one named wholesaler. The other wholesaler records detail purchases include ineligible items for a 5 U.S.C. § 552 (b)(6) & (b)(7)(C). during the six month review period. After contacted the named vendor, Retailer Operations did not find this listing of purchases to be credible.

The owner provided no customer statements regarding shopping behavior at the store. He provided no affidavits from recipients to support that these households did regular pre-orders at Appellant. No itemized cash register tapes to support eligible food sales at Appellant were provided. No business federal tax records or state sales tax reports were advanced. No business banking records were offered to support the owner's contention that trafficking was not occurring at Appellant.

**Attachment 2:** Listed are 38 transactions involving 11 unique households whereby the majority or all of the household's benefits were exhausted in unusually short periods of time. Retailer Operations determined that Appellant had more transactions flagged on this Attachment's parameters than three other convenience stores located within under a quarter mile distance of Appellant. Appellant had 33 flagged data sets while the three other convenience stores each had zero flags.

Retailer Operations found it unlikely that SNAP customers could legitimately exhaust their benefits at Appellant. Based on the onsite store visit of September 6, 2018, the FNS contractor who spoke with a cashier, noted that Appellant did not offer delivery service or take orders over the telephone, online or via another way. The store report also shows that Appellant did not round transactions up or down at checkout. This evidence contradicts the owner's written statement that he accepts orders and that he offers delivery service.

While the owner may be preparing boxes of eligible foods acquired for specific HHs to use their benefits, insufficient evidence was advanced to support this contention.

**Attachment 3:** Listed are 126 transactions conducted by 27 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 63% percent of the households flagged on this Attachment conducted a transaction(s) at a large grocery, supermarket, or super store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of making a transaction at Appellant. 5 U.S.C. § 552 (b)(7)(E). This is unusual.

The onsite store visit report confirms that Appellant did not sell fresh meats, seafood, produce, or high-priced staple food items. The store report indicates there were no handheld baskets or shopping carts to gather items that might total to large dollar transaction amounts of eligible items. Nonfood, ineligible items included: tobacco products, alcohol, health and beauty aids, paper goods, cleaning products, phone cards and lottery products. This convenience store offered no bundles or bulk deals that might entice recipients to expend large amounts of their benefits there.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. The sole vendor invoice from one vendor showed only an aggregate total dollar volume of six months of sales. No detail of eligible items acquired was provided. As to the inventory list from the other vendor, Retailer Operations contacted the vendor and decided the inventory list was not credible.

The owner provided no itemized cash register tapes for the review months. No pricing information for eligible items was advanced. No federal business tax returns or state tax filings were provided. No business banking statements were submitted. No evidence to support recipient pre-orders was provided. No recipient affidavits were proffered. Thus, the owner has not provided a preponderance of evidence that the transactions listed on the Attachments are for eligible foods rather than the result of trafficking.

Based on the overall record, and in the absence of compelling evidence for such transaction patterns, a conclusion can be drawn, that the “unusual, irregular, and inexplicable” transactions cited in the letter of charges evidence trafficking as the most likely explanation. The owner’s contentions and vendor documentation did not outweigh the evidence in the record.

### **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 owner failed to submit documentation timely to show that he met the four criteria in order to qualify for a CMP. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

### **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 other analysis that provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

In the absence of a preponderance of evidence presented by Appellant, of the legitimacy of the transactions, 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

March 7, 2019