

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

Dingess Service Center,

Appellant,

v.

Case Number: C0211998

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the preponderance of the evidence supports that Dingess Service Center (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). 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 FNS.

CASE CHRONOLOGY

By Charge letter dated August 31, 2018, Retailer Operations informed the owners that USDA had compiled evidence that Appellant had violated the SNAP regulations. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was

charged with trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification. One owner replied to the Charge letter by letter dated September 12, 2018.

Retailer Operations issued a Determination letter dated December 12, 2018. This letter informed the owners that Appellant was permanently disqualified as a SNAP 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 trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated December 17, 2018, one owner requested review of the determination. The request for appeal was granted by letter dated February 7, 2019. One owner provided additional information by letter dated February 26, 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 actions should be reversed. That means the Appellant has the burden of providing relevant evidence that 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 on review were based on an analysis of SNAP EBT data during the period of February 2018 through July 2018. This involved two patterns of EBT transaction characteristics that are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

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

- I would like an in person interview so that I may submit any sufficient evidence for further proof that the violations did not occur. I feel that I do have the evidence to show that I was wrongly disqualified.
- I am enclosing receipts to show evidence that my business kept, and still keeps enough food in stock to accommodate the purchases that were made.
- My business is in a very rural location with no public transportation.
- My store is the only means of grocery shopping for most customers, as many have no legal transportation.
- With the closest grocery being 14 miles away and across a mountain, many people use the convenience of my store for their staples.
- Large purchases are often made due to higher prices that a convenience store is forced to charge.
- As for purchases made close together, I cannot control how people spend their food stamps or how often they used them.

- Most items are bought on sale/or with coupons at larger stores and resold at a slightly higher price to make a profit.
- The location is by the road that most people drive to and from work. Many stop on their way to pick up breakfast, lunch or dinner.
- When customers need an item to make a meal, most times I have what they need with the convenience of being close to home.
- I have enclosed all receipts I had on hand. I do not purchase twelve pack of Coke and Pepsi from either vendor. They are purchased when on sale at places like 5 U.S.C. § 552 (b)(6) & (b)(7)(C). I do not have receipts for some purchases, but I have enclosed copies of bank statements showing large purchases at these stores when I had no receipt.
- You will find envelopes for each month January 2018 through July 2018 for purchases made from various vendors and stores for that month. I have enclosed a list of what is bought from each vendor and a list of every food items I sale [sic] along with the price I charge the customer.
- We have enclosed our monthly sales tax receipts from the months in question to show that we do a large amount of grocery sales, with food stamps being a small percentage of that. We are confident every receipt was not included and more information is needed to prove our position.
- Many people have no transportation and some like the convenience of not having to drive 20-25 minute to the grocery store. We are the only place that many of our customer get their groceries. If we don't have something the customer wants we make sure to get it for them.
- We realize that SNAP participants would benefit more by going to a larger grocery or supermarkets, but we cannot control where they used their cards or how much they spend at our store.

The owner provided invoices, bank statements, a price list, and 13 pages of spreadsheets. The record included a statement from an individual that took inventory and kept the store stocked. She stated she made two trips every week for miscellaneous grocery shopping, spending approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) each trip.

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 157 transactions in 61 data sets of two or more transactions conducted by 26 different households. Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking.

The record supports that there at least nine authorized stores within a ten mile radius of Appellant including a supermarket and two super stores. The data supports that SNAP recipients that transacted benefits at Appellant also conducted transactions at supermarkets and super stores. Of the households flagged on this Attachment, 35% transacted benefits at a supermarket or super store on the same day that they made a transaction(s) at Appellant, and 54% made transactions at larger stores within two days of making a transaction(s) at Appellant.

One owner contends that he cannot control how people spend their food stamps or how often they used them. Given the access to larger authorized stores, Retailer Operations questioned the legitimacy of the set time transactions at this convenience store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations found that the price listing and invoices advanced confirmed that Appellant stocked inexpensive food items consistent with those observed during the FNS-contractor store visit of December 30, 2017. Retailer Operations determined that it was unlikely that the convenience store items attracted customers to shop repeatedly at Appellant in set time periods for large total dollar amounts. The short-time period multiple transactions are questionable given the limited counter space at Appellant, and no shopping baskets or carts to take groceries in quantities to the counter. Retailer Operations found that the rapidly processed sets of multiple SNAP transactions were more likely indicative of trafficking than of legitimate purchases, given the amount of time needed to process each transaction, including checking the price of each item, ringing the amount, bagging items, and waiting for the recipient to swipe their EBT card.

The owner provided no itemized cash register tapes to support the legitimacy of the purchase of eligible foods at Appellant. No recipient statements were advanced to support the shopping pattern claimed by the owner. While some spreadsheets were provided, no actual federal or state business tax filings were advanced. Insufficient evidence was advanced to meet Appellant's burden to support its contentions.

Attachment 2: Listed are 339 individual EBT transactions conducted by 97 households that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The data shows that 45% of the households listed made a transaction(s) at a supermarket or super store, the same day that they conducted a transaction at Appellant, and 61% made a transaction at a larger store type within two days.

The data shows that Appellant's SNAP dollar volume for the review months **5 U.S.C. § 552 (b)(7)(E)** higher than stores of the same store type in the same County. Appellant's average SNAP dollar transaction amount was 38% higher than the average SNAP transaction amount in Mingo County. This is irregular.

Appellant stocks ineligible items such as: alcohol, health and beauty aids, pet foods, paper goods, cleaning products, and sells gasoline and lottery products. The checkout area appears to have a small counter space with one cash register, no optical scanner, and no shopping baskets or carts to assemble food and other purchases.

The owner claims that the transactions cited are typical and legitimate grocery transactions.

The regulations allow for disqualification of a retail food store on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system. 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.

The record shows some unusual transactions, even given the rural location of Appellant. For example, on March 4, 2018, a household conducted two transactions at a super store totaling less 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). That is a sizeable transaction at a convenience store particularly after having made transactions at a super store. On April 7, 2018, this household again made one low dollar transaction at a super store and later that date, it transacted more 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant in two short time transactions, numbers 11 and 12. From July 6 through July 8, this same household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in four transactions at a super store, and yet it made transactions numbers 91 and 92, plus another small transaction at Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), totaling more 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is suspicious.

The owner submitted additional documents to reflect daily and monthly gross sales of various items, including “Groceries” and “Food Stamps.” Retailer Operations determined that the gross sales for groceries and food stamps listed totaled more than the monthly invoice totals of the invoices previously provided. For example, in April 2018, Appellant’s spreadsheet lists 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for grocery sales and more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food stamp sales. Vendor invoices for that month totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Even with a high markup, the inventory seen during the store visit, and the prices given on the price list, would not likely generate the volume of gross food sales stated on the spreadsheet. Additionally, the spreadsheets show consistently lower SNAP total sales amounts than the actual SNAP redemptions at Appellant for the review months. This is irregular.

In appeal of this matter, 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. Appellant has not met this burden.

CIVIL MONEY PENALTY

7 CFR § 278.6(i) specifies the criteria for a store’s eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Appellant did not provide substantial credible evidence that it met all of the regulatory criteria for a trafficking CMP in lieu of permanent disqualification. Accordingly, Retailer Operations determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

CONCLUSION

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

The contentions offered for the transaction patterns were not persuasive by a preponderance of the evidence. No recipient affidavits were advanced to support the shopping patterns cited. No federal business taxes or actual state sale tax reports were advanced. No itemized cash register tapes were provided. By a preponderance of evidence, a conclusion can be drawn, that the unusual, irregular, and inexplicable transaction patterns cited in the letter of charges evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Your 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 the applicable rights to a judicial review of the determination. Please note that 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 the Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If a 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

April 17, 2019