

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

Dollar Plus Mart,

Appellant,

v.

Case Number: C0204146

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Dollar Plus Mart, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated January 3, 2018.

AUTHORITY

7 U.S.C. § 2023 and the 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 December 7, 2017, 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 May 2017 through October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted 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).

In a telephone conversation dated December 18, 2017, Appellant verbally replied to the charge letter and generally stated that it did not read the charge letter immediately because it thought the package was intended for another party. The store only installed one EBT terminal to save money and if it had known only one was a problem a second terminal would have been installed. Appellant stated that store patrons visit the store multiple times a day and did all of their grocery shopping there because they lived in close proximity and lacked transportation. Appellant also stated that business had increased dramatically over the past three years and the store began selling frozen eligible items such as hot pockets and burritos. The store also sold unique items that set it apart from nearby competitors. There were no comparable SNAP authorized competitors in close proximity to its store with the nearest comparable SNAP authorized competitor being approximately one mile away. Appellant indicated that non-SNAP debit sales at the store reflect similar aberrant transaction patterns.

After considering Appellant's reply and evidence of the case, Retailer Operations Division issued a Determination letter dated January 3, 2018. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated January 16, 2018, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an 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 matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) 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(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence*. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “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 in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of May 2017 through October 2017. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made too rapidly to be credible.
2. Multiple transactions were made from individual benefit accounts in usually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

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.

APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. In Attachment 1, these transactions were mostly conducted during the first half of the month which is the busiest time of the month in which we use two registers. We use the same terminal keypad on both sides of the register. With both customers already rung up, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** between the two customers to slide their cards after each other.
2. In Attachment 2, Most of the customers that shop here more than a few times a day live in one of the four apartment complexes around the store. It is not against regulations to help a customer twice or more in a matter of a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** period.

We cannot refuse service to individuals that come from a range of once to four or even five times daily.

3. In Attachment 3, keep in mind most of our EBT customers live across the street and most likely do not own a car. The closest supermarket is more than a mile away. A nearby store does not accept EBT forcing all households to use their food stamps at our firm. It is easy for an individual to spend an average 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Our store carries a wide range of products that many other convenience/liquor stores do not carry.
4. This act of disqualification doesn't make any sense and in no way provides legitimate proof of trafficking.

Appellant provided 13 pages of purchase invoices/receipts and 44 color copies of photos of the inside of the store. Pictures show 4 shopping carts but no handbaskets. Appellant also provided a summary of its financial history for debit/ATM card sales and EBT totals from August 2016 through January 2018.

The preceding may represent a brief summary of Appellant's contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on January 7, 2015. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a November 15, 2017, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Two cash registers and one POS device. Counter area is small partially obstructed by other smaller items available for sale.
- Estimated to be approximately 3250 square feet.
- Four shopping carts and one shopping basket available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- Some food is stored in an area outside of public view approximately 160 square feet in size storing drink items.
- No storage freezers or coolers and no food stored off-site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.

- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Coke (\$9.99, 20/pack), Infant Formula (\$32.99), Red Bull (\$9.99) and Beef Jerky (\$6.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, cleaning products, household goods, health and beauty products, gift items, party goods, tobacco products and clothing items.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- Appellant has empty or broken coolers.
- Some empty areas on a few of the shelves.
- No kitchen/prepared food area with hot foods sold for onsite consumption.
- No hot food sold.
- No food is sold for on-site consumption.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in 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 the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter – Multiple purchase transactions were made too rapidly to be credible.

There were 18 SNAP transaction sets that met the parameters of this attachment.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Retailer Operations considered this to be a strong indicator because the second purchase of items would have to be transported to the limited counter area, keyed at the register in the absence of optical scanners, a card swiped, a payment type entered, a purchase amount entered, a pin entered, an approval indicated and a receipt printed before the next transaction can be processed.

Appellant contends that it uses the same terminal key pad on both sides of the register.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). With regard to this contention, it would appear that some of the transaction sets, where the first transaction in the set is for a nominal amount, may appear to be achievable with Appellant's limited counter space, provided the transactions are by two different households. This possibility decreases with transaction sets where both transactions in the set are for an amount that would undoubtedly require a number of eligible food items that seemingly would not be able to be processed quickly with the limited counter space.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, given the steps required to complete a SNAP transaction (i.e. a card swiped, a payment type selected, an amount entered, a pin entered, an approval indicated and a receipt printed before the next transaction can be processed) this process alone would likely take much longer 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Though Appellant's contention may provide an explanation for some of the transaction sets in this Attachment, it does not adequately explain all and therefore based on the analysis above, it appears that the transactions are contrived and in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

There were 22 sets of 56 SNAP transactions conducted by three different households that met the parameters of this attachment. Multiple transactions conducted by the same household account within a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. The store visit report does not indicate any compelling reason for customers to consider Appellant's store a first-choice destination to fulfill large purchases of food or that they would have made relatively large, multiple purchases at the store 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

When purchasing food, people generally do not spend large sums at convenience stores. They usually stop at convenience stores to pick up quick snacks and/or a beverage, or for a few staple food items that they need, such as bread, milk, tortillas, or a can or two of some food, but which are not considered worth a trip to the supermarket to get. It is rare for a convenience store to have purchases such as those cited in the charge letter.

Appellant contends that most of the customers that shop more than a few times a day live in one of the four apartment complexes around the store. It is not against regulations to help a customer twice or more in a matter of a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period. We cannot refuse service to individuals that come from a range of once to four or even five times daily. With regard to this contention, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The transactions in this Attachment do not contain the characteristics associated with a recipient who may be purchasing forgotten items a short time after checking out or households returning to purchase a forgotten item or two. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second transaction amount would be for more than a nominal amount. The SNAP transactions in Attachment 2 of the Charge letter are not consistent with shopping patterns of someone who may have forgotten an item or two during the first trip especially when Appellant's depth and breadth of stock is limited and does not substantiate multiple large eligible SNAP purchases.

Though it may be true that some SNAP recipients do not have vehicles, and may live close to the store, the assertion that they make multiple trips in order to get the goods they need because they lack transportation does not provide evidentiary proof if it cannot be corroborated with register receipts to show the purchases of food. Additionally, the record reflects that an analysis of the shopping habits of six of the households identified in the charge letter concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates

that lack of access to other stores is not at issue and negates Appellant's claim that SNAP customers conduct all of their shopping at its store. This fact also confirms that transportation is not an issue for the households identified in the charge letter. In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

Attachment 3 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 554 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant contends that EBT customers live across the street and most likely do not own a car. The closest supermarket is more than a mile away and nearby stores do not accept EBT forcing all households to use their food stamps at its firm. Appellant also contends that it is easy for an individual to spend an average 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and the store carries a wide range of products that many other convenience/liquor stores do not carry.

With regard to these contentions, it is noted that the average transaction amount for convenience stores in California's San Bernardino County during the review period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C); 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is important to note that the appearance, quality and quantity of Appellant's stock do not rationalize SNAP recipients conducting so many high-dollar transactions at Appellant's store. In fact, the store visit demonstrates that this store does not sell any unique items that cannot be purchased at other stores in the area. Appellant also does not offer any fresh or frozen meat, seafood or produce, there is no food sold in bulk or any ethnic or specialty foods that sell for a high price. Moreover, the proximity of SNAP households to the store has been previously addressed in Attachment 2 above.

Invoice/Receipt Analysis

Appellant provided, with its review request, purchase receipts and invoices, for the review period, in support of its position. An analysis was conducted on the receipts and invoices provided and based on the analysis it was determined that there were dates and delivery address information missing on many of the receipts however; the Appellant was given the benefit of the doubt. Two receipt totals were not used because there were no items listed on the receipts. Additionally it was apparent that some of the invoices were missing pages so the analysis was based on the purchase items and prices provided on each receipt. Appellant's purchases for the review period were insufficient to substantiate the transactions as cited in the Charge letter.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Appellant also provided a print out of its Financial History for EBT Totals from August 2016

through Jan 2018. When comparing Appellant's report of EBT transaction totals to that of FNS, during the review period of May 2017 through October 2017, it was found that Appellant's totals exceeded the amounts as reported to the Agency therefore this report cannot be viewed as a credible source of evidence in this case.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Appellant contends that this act of disqualification doesn't make any sense and in no way provides legitimate proof of trafficking. With regard to this contention, as previously noted, 7 CFR § 278.6(a) states 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, or this part. 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. 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. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy 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. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership 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 matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in three attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of credible explanations for customer spending habits given that there are other SNAP authorized stores

located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other small grocery stores in the State.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated December 7, 2017, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Dollar Plus Mart from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Dollar Plus Mart is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

April 26, 2018