

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

**Edison Texaco Mini Mart,**

**Appellant,**

**v.**

**Case Number: C0209330**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Edison Texaco Mini Mart (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 August 30, 2018, the 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 November 2017 through April 2018. The letter noted that the sanction 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). By a letter dated September 17, 2018, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP, effective upon Appellant's receipt of said letter; the letter further instructed Appellant that it may

request an administrative review of the decision. On September 27, 2018, Appellant requested an administrative review of the ROD Office's decision; the request was granted.

## STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating 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, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...a disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & 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(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, in part:

**Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR §278.6(f)(1) states, in part:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR §278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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...

7 CFR §278.6(b)(2)(iii) states, in part:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in §278.6(b)(1), the firm shall not be eligible for such a penalty.

### SUMMARY OF THE CHARGES

- A series of multiple SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from the accounts of individual SNAP households within a set time period (Attachment 1).
- In a series of SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the majority or all of individual household benefits were exhausted in unusually short periods of time (Attachment 2).
- A series of excessively large SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from household accounts (Attachment 3).

### APPELLANT'S CONTENTIONS

In Appellant's written request for review dated September 27, 2018, and in subsequent correspondence, it was argued that:

1. Appellant states that it had a phone conversation with the ROD Office; Appellant states that the ROD Office then planned to send the firm more paperwork so Appellant would be able to provide proof. Appellant never received this paperwork, only a Determination Letter disqualifying the firm.
2. Appellant explained to the ROD Office that the store kept a running tab for food purchases by regular customers, most of which were homeless and lived near the store. Appellant thought it was helping the customers and doing nothing wrong and would not have done it if Appellant knew it would be in trouble. Appellant explained to the ROD Office that the higher transaction amounts in the Charge Letter were due to customers paying debt accumulated over a month or more. Repetitive transactions were due to partial payments made on accounts. Each customer paid an amount they could afford and entered their PIN number themselves. Appellant includes a list of 35 customers who were extended credit; some have paid off these accounts and some have not. Appellant provides three customer letters attesting that they have been extended credit.

## ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on May 21, 2018, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 3300 square feet of store space.
- No shopping carts or baskets.
- No night window used.
- No evidence of wholesale business.
- Prices in standard retail variations of \$.x9.
- One check-out area, one cash register and one card reader.
- 500 square feet of storage space.
- Storage coolers present.
- No food stored offsite.
- No telephone, online or other orders.
- No delivery offered.
- No transaction rounding at check-out.
- Four most expensive SNAP-eligible items:
  - Jerky - \$6.99 - 3.25-ounces.
  - Coffee - \$9.99 - 12-ounces.
  - Bacon - \$7.99 - 1-pound.
  - Soda - \$6.99 - 12-pack.
- All above questions answered in collaboration with store personnel.
- The firm also sold alcohol, tobacco products, automotive products, health and beauty products, paper goods, cleaning supplies, housewares, gift items, party goods, clothing, souvenirs and other non-food items.
- The firm also operated as a gasoline station. Photo: 2.
- No hot food sold.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Old hot food equipment not in use; no license to sell hot food.
- The firm was a marginally to typically-stocked convenience store in all relevant respects. Photos: 2, 10, 18, 20, 21, 23, 29 and 30.
- Sparsely stocked shelves/coolers. Photos: 11, 14, 19, 22 and 32.
- Check-out counter space approximately 1.5 X 1.5 feet of available space and surrounded by candy, snack foods, tobacco products and non-food items. Photo: 4.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area approximately 1.5 X 1.5 feet of available space and surrounded by candy, snack foods, tobacco products and non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-

stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of California during the analysis period was \$7.21, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, the record reflects that the ROD Office did not initially request Appellant submit documentation supporting its contention that credit account activity explained the transactions detailed in the ROD Office's Charge Letter dated August 30, 2018, though the firm was in no way prevented from provided any such documentation it deemed appropriate. It is not clear from the record that the ROD Office knew about Appellant's credit account rationale; there is no indication in ROD's casefile documentation that a reply to its Charge Letter was received prior to ROD making its sanction determination via a letter dated September 17, 2018. The Appellant states that it replied via a telephone call to the Charge Letter, but presents no documentation in support thereof (no date or time), other than the assertion itself. The ROD Office was subsequently provided this additional information by the ARO, which appeared according to the record to have not previously been provided by Appellant to the ROD Office, and the ROD Office was requested to re-evaluate its sanction decision in light of the new information. Such re-evaluation was subsequently conducted, which included contacting the Owner of the Appellant firm on November 20, 2018. During that call, the ROD Office notes that it requested documentation from Appellant which would support Appellant's assertion that credit account activity, not SNAP-benefit trafficking, more likely explains the transactions detailed in the ROD Office's August 30, 2018 Charge Letter. The ROD Office indicates that Appellant stated it did not have such documentation as it was discarded as soon as each credit account was paid off. This also corroborates the statements Appellant made in support of its review request (that no such documentation existed). Thus any reply and supporting documentation that Appellant may have provided in an initial reply to the Charge Letter could also have been provided to the review officer in its review request and/or subsequent correspondence and/or to the ROD Office during, or subsequent to, its telephone conversation with Appellant on November 20, 2018. Appellant provided one customer statement (that had not already been provided in support of the review request) to the ROD Office as a result of the November contact ROD initiated with Appellant, for which the ROD Office could not identify a specific SNAP household using state SNAP recipient records. The information provided no compelling evidence supporting Appellant's contentions.

With regard to contention 2 above, Appellant also noted that many times partial SNAP payments on credit accounts were accepted and that some accounts had not been paid off; thus running totals and/or receipts would have continued to have existed/been maintained. Thus it is unclear why Appellant did not provide documentation related to these accounts in support of its credit rationale. Nonetheless, a full accounting of the Charge Letter transactions is required to demonstrate a valid credit rationale; a partial accounting, even if it had been provided, would not have compellingly supported Appellant's credit rationale.

Appellant provided the names of 35 customers said to have had credit account activity at the Appellant store during the analysis period. The ROD Office analyzed this information and determined that of the 35 names, only 14 included both a first and a last name. The remainder listed only a nickname or a first name. Of the 14 full names, eight were identified in the

California SNAP Administrative Terminal. Of these eight, only three conducted Charge Letter transactions:

- HH (household) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transactions appeared every month and were consistent with credit account activity. The household conducted 28 Charge Letter transactions, including eight Attachment 1, nine Attachment 2 and 11 Attachment 3 transactions.
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C): conducted only one Charge Letter transaction (Attachment F) during the review period.
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C): the household conducted only two transactions (Attachment F) during the analysis period.

Thus only 31 of the Charge Letter transactions could be connected to any of the names provided in Appellant's list (included in its October 30, 2018 letter). It is noted for the record that there are 104 transactions in Attachment 3 alone. Only one of the three households conducted transactions that were consistent with credit account activity. Accordingly, the list of names constitutes dramatically insufficient evidence to prove credit accounts more likely explain the activity in the Charge Letter. The information cannot establish that credit accounts, as opposed to SNAP-benefit trafficking, better explain the transactions detailed in the Charge Letter.

It is added for the record that the prohibition of accepting SNAP benefits as payment on credit accounts was provided to Appellant via a training video, a written training guide and numerous other materials including posters/signs. The information stating that credit accounts are prohibited was presented multiple times in the information provided to Appellant.

In regard to Attachment 1 to the Charge Letter, while there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. The record reflects, as noted above, that the Appellant firm was a typically-stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Attachment 2 contains instances in which SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week following benefit issuance. The likelihood that these transactions were the result of the legitimate sale of eligible

foods only is extremely small. A government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 79 percent of a household's allotment remains unspent. After seven days 41 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 79 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Depleting one's entire allotment in one or two days during the first week following benefit issuance, in a single large transaction or in a series of high cumulative transactions in a short period of time, especially in a typically-stocked convenience store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to divert attention to signs of same.

The information in the record reflecting the firm's business operations does not explain the transaction activity; information in the record regarding the firm's inventory, including the store visit referenced above, reveals no legitimate basis for SNAP customers' attraction to the firm, there being no superior selection of staple foods, no evidence of a price advantage, no compelling evidence of package, bulk or promotional items, no extensive variety of otherwise unavailable ethnic food items and no evidence of custom or special services rendered. The information provides no compelling rationale, other than SNAP-benefit trafficking, for the excessively large transactions contained in Attachment 3.

Moreover, the ROD Office compared the firm's average SNAP transaction amount with three nearby comparable stores (convenience stores within one-quarter mile of the store); Appellant's average transaction was over twice that of the other stores. Appellant also conducted multiple times the number of transactions in several transaction bands 5 U.S.C. § 552 (b)(6) & (b)(7)(C), compared to the nearby stores. The firm's average SNAP transaction during the analysis period was nearly three times the state store-type average. Furthermore, ROD Office analysis reflects that customers conducting implausible transactions at the Appellant firm were shopping at much better-stocked and quite likely more competitively-priced super stores and/or super stores on or about the same day, calling into question what these customers could obtain at Appellant's typically-stocked convenience store that they could not obtain at the better stocked stores. This, moreover, tends to contradict the credit rationale, as customers had SNAP benefits to spend at other stores and did not appear to need credit at the Appellant firm. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

Furthermore, ROD Office analysis reflects that the numbers of Appellant's SNAP transactions in most transaction bands during the analysis period were multiple times that of the store-type average in Kern County, California: 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the firm conducted four times the average number of transactions conducted in SNAP-authorized convenience stores in the county; 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the firm conducted over two and one-half times the average number of transactions; 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the firm conducted three

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<sup>1</sup> Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Final Report. Prepared by Mathematica Policy Research for the Food and Nutrition Service, USDA, February 2011.

and one-half times the average number of transactions; 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted, the firm is a typically-stocked convenience store in all relevant respects; there exists in the record no legitimate basis for the nature and level of the firm's transaction and redemption activity.

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the ROD Office's Charge Letter dated August 30, 2018, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the ROD Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the ROD Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

### **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY  
Administrative Review Officer

January 28, 2019