

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

**El Principle Grocery Store Corp,**

**Appellant,**

**v.**

**Case Number: C0201755**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record indicates that El Principle Grocery Store Corp. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retail food store in the SNAP, 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 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**

By Charge letter dated August 18, 2017, Retailer Operations informed the owner that FNS had compiled evidence that Appellant had violated the SNAP regulations based on analysis of electronic benefit transfer (EBT) transactions that “establish clear and repetitive patterns of

unusual, irregular, and inexplicable SNAP activity for your type of firm.” The sanction for trafficking is permanent disqualification.

The record supports that Appellant replied to the Charge letter August 28, 2017. In this reply counsel requested additional information. Retailer Operations acted on this request and forwarded it to the FOIA office. The record supports that on October 23, 2017, the FOIA office sent counsel an email that the FOIA request was administratively closed due to fee related issues. Absent agreement to pay the fees, no agency reply to the FIOA request was provided.

Retailer Operations issued its Determination letter December 11, 2017. This letter informed the owner that Appellant was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. Retailer Operations 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, the firm was not eligible for the CMP because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP per the regulations cited.

By letter dated December 20, 2017, the owner, via counsel, appealed Retailer Operations’ determination and requested administrative review. The appeal was granted by letter dated January 3, 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). Parts 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 § 271.2 states in part: “Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

7 CFR § 278.2(f) states: “Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year.”

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 on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system. . . .”

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 § 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 December 2016 through May 2017. This involved two patterns of transactions indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated herein.

- The store submits that the letter is not based on any direct evidence that trafficking took place, and therefore does not warrant a permanent disqualification.

- The store is not asking for a CMP, my client believes the Agency must re-consider the evidence, dismiss all charges and take no further action in this matter.
- The agency policy is arbitrary and is in direct violation of substantive and procedural due process.
- USDA issued a summary decision based on computer compilation, without any evidence of fraud or trafficking or any violation of the program.
- None of the enumerated activities that give rise to this action necessarily constitutes trafficking.
- I request the action against my client be immediately reversed.

## ANALYSIS AND FINDINGS

The evidence that Appellant violated the SNAP regulations is furnished with the Charge letter as Attachments. Contrary to counsel's December 20, 2017 letter, two Attachments are at issue in this matter. Government analyses of stores caught in trafficking violations during actual on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges.

SNAP transaction data is provided to FNS via each state's EBT processor on a daily basis in a single layout and format that is standardized nationwide. The transactions are validated and loaded into a database for subsequent analysis. A USDA system scans all retailer SNAP transactions at the beginning of each month for the prior month. The system uses pre-defined criteria or patterns for potential fraud detection. Formatted reports provide information on those authorized stores and transactions meeting the pre-established criteria.

The system provides a series of spreadsheets and graphs that compare a specific store's data to the average for its firm type or to user-selected comparison stores. In addition, the system utilizes mapping software which translates the location address information into geo-codes, and enables the user to map the locations of selected authorized stores and track transaction locations of recipients. Retailer Operations staff use the analysis of SNAP transaction data to evaluate the type and extent of potential program violations.

**Attachment 1:** Listed are 81 transactions in 33 sets of two or more transactions, conducted by 21 different households (HHs). **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Data shows that within a radius of a half mile of Appellant there are 84 authorized small, medium and large groceries, supermarkets, convenience stores, combination stores, and super stores. The data shows that 10 of the 21 HHs flagged on this Attachment made SNAP transactions at a large grocery, supermarket or super store within one day of conducting transactions at Appellant. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** This supports that there is no lack of authorized store options for SNAP recipients to purchase eligible foods. Given the shopping options for SNAP recipients in this area, it seems irregular that multiple SNAP expenditures for eligible foods were made in short periods at Appellant. Retailer Operations compared Appellant's flagged transactions to six nearby small groceries within 0.31 miles from Appellant.

Appellant had 81 transactions flagged, while the other stores had 0, 5, 0, 0, 2 and 0 transactions flagged. This is suspicious.

Contentions:

- The store denies that it engaged in trafficking in regards to multiple transactions made by individuals in short time frames, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- No FNS regulation or guidance addresses what period of time might be deemed impermissibly short.
- If a beneficiary wants to purchase one food item per hour until his/her benefits are exhausted, no program rules would be violated and a SNAP vendor could not refuse to serve the customer.
- The store has no control over the spending habits of customers.
- As to transactions that took place over a large period of time, or on different days, it is hardly unreasonable for customers to require groceries more than one time per day or on successive days.

Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One food item purchased every hour would not likely be captured by system scans unless the one item met the various scan parameters.

The owner did not provide itemized cash register tapes to support the sale of SNAP eligible foods, or vendor documentation to support that SNAP eligible foods were acquired in amounts to cover the SNAP redemptions at Appellant for the review months. No price list of eligible items was advanced. No store flyers or advertisements were provided. Appellant provided no federal or sales tax records, and no business bank records to support that trafficking did not occur were advanced. No recipient affidavits were provided in support of its contentions regarding customer purchases at Appellant. Thus, the transactions have not been demonstrated by a preponderance of the evidence to be for eligible SNAP foods.

**Attachment 2:** This Attachment lists 110 SNAP transactions made by 46 households 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant had 110 transactions flagged on this Attachment, while other nearby small groceries located within walking distance at 0.31 miles, had 11, 36, 12, 0, 57, and 14 transactions flagged. This is suspicious.

Contentions:

- There is no evidence that the large transactions were the result of trafficking.
- The store is in a densely populated urban area.
- The surrounding area houses many low income residents with large families, most redeeming benefits.
- Many such low income customers do not use large supermarket chains and rely on small local grocery stores. This explains the high foot traffick in the store.

- The store location, demographics of the local population and its food shopping patterns and preferences explain large purchases made from same accounts.
- It is not unusual for a family with several children to spend a large amount of money of food stamps in one shopping session.

Appellant was provided an opportunity to respond to the Charge letter and to provide evidence that the unusual transactions were eligible SNAP food sales. All documentation provided to Retailer Operations is reviewed and considered prior to issuance of a Determination letter. Appellant did advance some contentions however; no evidence was advanced to support these arguments. Based on the transaction data in two Attachments, an onsite store visit and inventory report, recipient transaction analyses, and consideration of the response to the Charge letter, Retailer Operations acted on its case to permanently disqualify Appellant.

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. When a firm is at least once granted authorization to participate in SNAP, this not an unencumbered right or entitlement, and it does not extend in perpetuity. USDA has the obligation to safeguard the public's trust and financial interests. The agency labors to do so by diligently operating the program in accord with the statute enacted by Congress and the regulations promulgated to implement the provisions thereof. Within this context, while due process is honored, the agency is not burdened with proving to Appellant's satisfaction that Retailer Operations has properly imposed the sanction at issue. Rather it is Appellant's burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same.

Contentions that the agency has not proven its case are largely irrelevant, and an ineffective means by which to demonstrate that Appellant has not engaged in violative SNAP activity. Asserting that USDA has not adequately proven its case does not disprove trafficking, and such contentions do little to advance Appellant's case. A store owner who seeks to set aside an agency sanction action 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.

### **CIVIL MONEY PENALTY**

To be considered eligible for a CMP in lieu of permanent disqualification for trafficking, a firm must establish, by substantial evidence its fulfillment of the criteria as listed at 7 CFR § 278.6(i). Appellant produced no evidence was that met the requirements to qualify for a trafficking CMP in lieu of permanent disqualification within the regulatory time frame. In fact, counsel states that "The Store is not asking for CMP..."

### **CONCLUSION**

An Appellant that seeks to set aside an agency sanction based on charged trafficking must provide evidence by a preponderance that the transaction activity cited by Retailer Operations is not due to SNAP benefit trafficking. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to provide material evidence as to the legitimacy of the transaction patterns set forth as suspicious by Retailer Operations. This burden has not been met in this matter.

Retailer Operations' analysis of Appellant's EBT 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. Retailer Operations used computer printouts of transaction data and other data reports, a store visit report and inventory and an analysis of household shopping behavior in rendering a finding that violations indicative of trafficking occurred at Appellant. These are as valid a means of establishing facts as direct evidence obtained through an on-site investigation and the eye witnessing of trafficking. The evidence supports by preponderance that it is more likely true than not true that program violations did occur at Appellant. Thus, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

Appellant did not provide any documentation as required by the regulations for consideration for a trafficking CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP according to Section 278.6(i) of the SNAP regulations.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008, and Section 279.7 of the regulations (7 CFR § 279.7) discuss the applicable rights 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 the Appellant's owners 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, 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 2, 2018