

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

**Elizabeth’s Convenient Store & Hair
Braiding,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0212663

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Elizabeth’s Convenient Store & Hair Braiding (Elizabeth’s Convenient Store or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), 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(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 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 September 25, 2018, the Retailer Operations Division charged 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 January 2018 through June 2018. 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 Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges by letter on November 12, 2018. Appellant denied trafficking and explained the transactions were the result of allowing some customers to make repayments on credit accounts with SNAP benefits. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated December 13, 2018. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter postmarked December 20, 2018, ownership appealed the Retailer Operations Division's determination and requested an administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions 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.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification 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(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**, . . .” (emphasis added)

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.

7 CFR § 278.6(i) states, inter alia:

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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. [Emphasis added.]

SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from January 2018 through June 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions 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

In its December 20, 2018, administrative review request, and subsequent correspondence dated March 1, 2019, Appellant provided the following summarized contentions:

- Appellant denied the charges and admitted that it sold eligible food items to people who had an EBT account on store credit for food items.
- The decision was arbitrary and capricious and violated FNS regulations.
- The determination that Appellant engaged in trafficking of SNAP benefits and disqualified Appellant from receiving a CMP in lieu of a permanent disqualification was unfounded and erroneous.
- The multiple transactions were the result of Appellant extending credit to households.
- The large transactions were due to some other food items that exceeded 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- A compliance program was in place at the time of the transactions.
- The owner was fully training on SNAP regulations, reviewed the SNAP website, and watched the SNAP CD.
- The owner personally trained each new employee on SNAP regulations and compliance.
- Appellant provides ethnically and religiously diverse food to a poor community and a permanent disqualification from SNAP would cause undue hardship on the community.
- The families served include at least ten members and often as many as 15 or 30.
- These families often purchase multiple cases of various food items including Halal meat, corn-flour, and fish.
- Because Appellant's credit ledger was not organized, it would often run the EBT card multiple times during a short time frame as the employee searched the credit ledger for additional entries.
- Appellant carried several items unique to the ethnic and religious minority communities that it serves that are expensive and can be more than \$45.00 per case.
- Several cases of each item are kept in stock because the large families purchase large quantities.
- Each family has the ability to purchase one or more cases of several different items in one transaction.

In support of its contentions, Appellant provided nine photographs, a partial credit ledger, and affidavit of owner. The affidavit contained the following explanations:

- Appellant created a compliance program that included employee training.
- Ownership personally trained each new employee on SNAP regulations and compliance.
- Ownership managed, supervised, and trained all employees.
- This community depends on Appellant to provide ethnic and religious foods including African bread, jams, and preserves.

- Appellant also provides Halal or religiously prepared meat.
- The community has exceptionally large families of at least ten members and some as large as 20.
- It is common for each family to purchase several cases of expensive and unique food items from Appellant.
- There are not many stores in the area that provide the food items that Appellant provides to the African and Muslim community.
- Appellant has allowed store credit and kept a notebook that was unorganized and sometimes would have to run the EBT card two or three times.
- Appellant has stopped the practice of extending credit and is willing to pay a penalty.

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

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Elizabeth's Convenient Store as a convenience store on March 15, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 15, 2018, store visit 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 firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Elizabeth's Convenient Store is approximately 2400 square feet with an additional 250 square feet of storage outside of public view.
- There were some shopping baskets but no shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no fresh meat, poultry, or fish
- There were some large bags of grain.
- There only fresh produce was some onions.
- Dairy included milk, sour cream, yogurt, cheese, and butter.
- Frozen food included some bags of meat and vegetables.
- Other staple foods available for purchase were eggs, juice, rice, beans, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included tobacco, health and beauty products, cleaning products, and paper products.

Charge Letter Attachments

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.

Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 21 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Appellant states that the store accepted SNAP benefits as repayments on credit accounts for a few select households. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

Appellant provided some pages of an alleged credit ledger that contained names and amounts with some partial descriptions. There were no dates provided and there was no attempt to match up the names to the questionable transactions listed on the Charge Letter Attachment. Many of the entries contained no descriptions but others were for braids and dresses or other non-food items. . The Retailer Operations Division determined that there was insufficient evidence to prove that credit account repayments explain any of the irregular transactions cited in the charge letter.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #1 were legitimate purchases of eligible food.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 184 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are questionable because they are not consistent with the store's inventory with limited staple food stock with no fresh meat and limited fresh produce. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

Counsel contends that the large transactions were due to some food items that exceeded **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Counsel further explains that several cases of each item are kept in stock because the large families purchase large quantities. The evidence does support that Appellant did sell some high dollar food items, including large bags of grain and frozen bags of meat. However, the evidence shows that Appellant did not have large stock of these items. There did not appear to be many items available for purchase by case. In general, Appellant carried a limited stock of staple food items. While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument

With its reply to the charge letter, Appellant submitted invoices to the Retailer Operations Division to support its eligible food stock. The Retailer Operations Division analyzed the receipts/invoices and determined that Appellant is unable to justify its SNAP redemptions. The Retailer Operations Division gave Appellant the benefit of the doubt and included amounts from its bank statement from Costco and Restaurant Depot that may include ineligible non-food items. The Retailer Operations determined that with a 40% markup and consideration of other payment sources, the retailer did not purchase sufficient quantity of food during the review period to justify its SNAP redemptions.

In addition, there were no invoices provided for the Halal meat items that counsel reports that Appellant sells. In fact, there were no invoices provided for any meat items. There were limited bags of frozen meat visible in the photographs from the store visit. However, without receipts, there is no evidence that this item is purchased in sufficient quantities to support the SNAP redemptions and to explain these large dollar transactions. Furthermore, even if there was sufficient food stock at Appellant to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there and spend substantial amounts of their SNAP benefits.

The Retailer Operations Division compared Appellant to two nearby small groceries and a combination store that carried similar ethnic products and were all better stocked. Appellant's average SNAP transaction amount was greater than each the other three stores. The Retailer Operations Division considered this an indicator of trafficking given Appellant's limited supply of food items.

The Retailer Operations Division examined four households identified in the charge letter to analyze their shopping patterns at Elizabeth's Convenient Store compared to their shopping patterns at other SNAP authorized stores. One household exclusively shopped in Nebraska and conducted one manual transaction at Appellant **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It was likely that the transactions was conducted without the card being present and was trafficking in SNAP

benefits. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual given some of these other ethnic stores are larger and better stocked than Appellant. The other two households mostly shopped at supermarkets and super stores. However, despite this access to better stocked stores, each of the other households conducted excessively large transactions at Elizabeth's Convenient Store within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

Appellant contends that most of the large transactions are the result of the firm allowing a few of its SNAP customers to shop on credit and then pay the store back when the household's benefit allotment is replenished. As indicated previously, credit transactions must be accounted for with substantive evidence such as to the dates credit was extended, to whom, for what amount, and for what items. The evidence does not support that any of these large SNAP transactions are for the repayment of credit accounts. The evidence provided by the retailer did not identify the dates that credit was extended or the full name of the customer. As a result, there is insufficient evidence to prove that credit account repayments explain any of the irregular transactions cited in the charge letter. Thus, the Retailer Operations Division properly determined that the evidence submitted by the Appellant was insufficient to justify the irregular transactions cited in Charge Letter Attachment 2.

Decrease in Unusual Transactions

The Retailer Operations Division determined that upon receipt of the charge letter on September 26, 2018, Appellant's SNAP redemptions decreased by 25% and the unusual high dollar SNAP transactions decreased by about 25% as well. If the high dollar transactions in the charge letter were legitimate food purchases, then there should not be a drastic decrease in this type of transaction following receipt of the charge letter. As such, unexplained and drastic declines transaction patterns as a result of receiving compliance related correspondence are often indicative of trafficking.

Evidence

Counsel contends that the determination that Appellant engaged in trafficking of SNAP benefits and disqualified Appellant from receiving a CMP in lieu of a permanent disqualification was unfounded and erroneous. The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which states, inter alia, "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**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. The vendor invoices of SNAP eligible items acquired in inventory to support Appellant’s SNAP redemptions were not sufficient to cover the high SNAP redemption total for the review months. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

Summary

In summary, Appellant’s layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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 to legitimize 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.

CIVIL MONEY PENALTY

Appellant did not timely **request** consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states 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 in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to

demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. With its review request, Appellant provides assurances that it trained its employees; however, this is not the type of substantial evidence required by the regulations. It would also be very difficult for the Appellant to contend that it had an **effective** SNAP compliance policy and training program when it admits the store was offering food on credit to its customers and accepting SNAP benefits as repayment on credit accounts in violation of SNAP regulations. In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's 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. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 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.

MARY KATE KARAGIORGOS
Administrative Review Officer

June 13, 2019