

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

**Family Market,**

**Appellant,**

**v.**

**Case Number: C0203868**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Family Market (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

**ISSUE**

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

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with the Food and Nutrition Service.

**CASE CHRONOLOGY**

By Charge letter dated February 6, 2018, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter by telephone call February 8, 2018, no information was subsequently submitted. Retailer Operations issued a Determination letter dated March 21, 2018. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter postmarked March 26, 2018, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated April 4, 2018. No additional information was provided by the owner.

### **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). Sections 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 § 278.6(e)(1) reads: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

## **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of June 2017 through November 2017. The patterns of transaction characteristics indicative of trafficking are:

1. An unusual number of transactions ending in same cents values.
2. Multiple purchase transactions made in unusually short time frames.
3. The majority or all of individual recipient benefits exhausted in unusually short periods of time.
4. Excessively large purchase transactions made from recipient accounts.

## **APPELLANT’S CONTENTIONS**

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

- I have no documentation or evidence that I can submit.
- We are in a low income neighborhood.
- The business depends on this program to survive.

## **ANALYSIS AND FINDINGS**

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 108 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). No change is provided with SNAP transactions, therefore there is no incentive to price items in a certain way

since there is no inconvenience with change. When there are a disproportionate number of transactions that end in same cents values, it appears that the amounts are contrived and indicative of trafficking.

The owner provided no price list of the eligible foods at Appellant. No itemized cash register tapes were advanced. No recipient statements were provided to support that beneficiaries asked 5 U.S.C. § 552 (b)(6) & (b)(7)(C) amounts be deducted from their benefits. The owner has not by a preponderance of the evidence addressed this Attachment to support that it the transactions listed are eligible SNAP transactions.

**Attachment 2:** Listed are 96 transactions in 39 sets of two or more transactions conducted by 24 different households (HHs).

The owner provided to evidence to support that the transactions listed were for legitimate SNAP foods.

**Attachment 3:** Listed are 48 transactions conducted by 19 households whereby the majority or all of their benefits were exhausted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The data shows that within two days of conducting a transaction at Appellant 26% of the 19 HHs flagged shopped at a super store, supermarket or large grocery. So other shopping options were available. When compared to five nearby convenience stores Appellant was the only store to have any transactions on this Attachment.

The data shows that located within a one mile radius of Appellant that are three authorized larger stores including a small grocery, a super store and medium grocery. There are also ten authorized convenience stores within a one mile radius of Appellant. As such, SNAP beneficiaries have a variety of authorized stores at which to redeem benefits. The owner provided no evidence to support why these recipients choose to expend their benefits at this convenience store with limited variety of staple foods.

**Attachment 4:** Listed are 357 transactions conducted by 117 different households for amounts that exceed the average transaction amount for the same store type in the same state 5 U.S.C. § 552 (b)(7)(E). 5 U.S.C. § 552 (b)(7)(E). Appellant also had many more transactions flagged on this Attachment than five nearby convenience stores.

5 U.S.C. § 552 (b)(7)(E).

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. While due process is honored, the agency is not burdened with proving to Appellant's satisfaction that Retailer Operations has correctly 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. An Appellant that seeks to set aside an agency sanction 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. Since permanent disqualification is warranted on the first occasion of

trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious in the Attachments provided with the Charge letter. This burden has not been met.

While some households may have conducted legitimate transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided no vendor invoices of eligible items acquired to support Appellant's SNAP redemptions. The owner provided no itemized cash register tapes for the review months. No pricing information was advanced. No SNAP customer statements were provided to support that the transactions listed were for eligible foods. No federal business tax returns or state tax filings were advanced, and no banking statements were provided. Thus, the owner has not provided a preponderance of evidence that the transactions on various Attachments are for eligible foods rather than the result of trafficking.

The owner contends that a SNAP disqualification will have a negative financial impact on Appellant's business. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges.

### **CIVIL MONEY PENALTY**

The owner did not submit documentation to prove that Appellant met the trafficking CMP requirements as stipulated in the regulations at 7 CFR § 278.6(i). These regulations specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP 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. Based on empirical data and in the absence of a preponderance of evidence of the legitimacy of the transactions on the Attachments, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer

Operations' denial of a trafficking CMP was proper per the applicable regulations. The decision to impose a permanent disqualification against Appellant is sustained.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to a judicial review of this decision. 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 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.

M. Viens  
Administrative Review Officer

May 21, 2018