

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

**Fat Boys Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0214191**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Fat Boys 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 30, 2019.

**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**

By charge letter dated December 14, 2018, Retailer Operations Division informed ownership that Appellant was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 271 – § 278, based on EBT benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The charge letter stated, in relevant part, that “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.”

In correspondence dated December 18, 2018, Appellant responded to the charge letter and generally stated that in regards to the transactions listed in Attachment 1, the SNAP cards do not have any names on them and there is no way it can know which card has been used in the same day and that anyone can walk into the store with a SNAP card and use it if they have the pin code so there is no way it has violated the SNAP regulations by having people use their cards multiple times per day. Most of the multiple transactions were done by different people using the same card.

In regards to Attachment 2, some clients walk into the store and buy lots of groceries and it makes no sense to stop them from purchasing groceries they need. Appellant stated that it has eight (8) cameras in the store is willing to provide videos for any day to show who came in the store and who used the SNAP card and what they purchased.

Retailer Operations Division gave consideration to the Appellant's reply and evidence of the case, and issued a determination letter dated January 30, 2019. This 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 February 8, 2019, Appellant, through counsel, 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 ...”

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 CHARGES**

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six-month period of April 2018 through September 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time-period.
2. Excessively large purchase transactions were made from recipient accounts.

The first 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, through counsel, 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. The store sells fresh produce and the highest priced items are Jasmine rice at \$45, Nestle Nido at \$39.99, Peanut Oil at \$39.99, Enfamil at \$37.00, Similac at \$37.00, Sugar at \$27.99 and Olive Oil at \$21.99. In addition we sell red bull \$71.99 (2 packs), Monster \$36.99 and Pepsi \$14.99.
2. For Attachment 1 - My client has no control over the number of times that the recipient can use the card and whether the recipient uses the card as the card does not have an identifying picture.
3. It is not unusual for customers to request their order be billed in smaller orders.

4. Customers will on occasion purchase a cheap item to view the receipt to check the balance. When the customer realizes there are additional SNAP benefits, it is not unusual for them to complete their purchase by purchasing other items in a separate transaction. Also customers may make a third purchase if they have a remaining balance to use the remaining balance.
5. Customers sometimes go to the store in the morning and can only carry some items then have to come back in the afternoon with their children after school so they can take more items.
6. For Attachment 2 – The purchases in Attachment 2 are not large when buying groceries for a family of 4. The purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could have easily been a result of the customer purchasing Red Bull at \$71.99 with other items like a bag of rice for \$45.00 or Enfamil for \$37.00.
7. My client has no control or right to control the dollar amount of a customer's purchase. As such, customers are free to purchase whatever dollar amount they desire with no limits.
8. Customers save more money when they buy promotions and they take advantage of that as the soft and energy drink specials allow them to obtain a lot of items for less.
9. Disqualifying Fat Boys Mart from SNAP would be a significant disadvantage and hardship for both local and distant customers as they will no longer have access to a conveniently located grocery store.

Appellant provided 10 black and white photographs of its most expensive items, a USDA report of Official USDA Food Plants: Cost of Food at Home at Four Levels U.S. Average, April 2018 through July, 2018 and November 2018, Appellants May 2018 through October 2018 Sales and use Tax Returns and 550 pages of receipts many of which were faded and illegible. 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 file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a November 10, 2018, 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:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 1800 square feet.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store partially operates 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.
- No food stored in an area outside of public view
- 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 Scott Pete Polish Sausage (\$6.99), Enfamil Baby Formula (\$6.50), ice Mountain Water (\$8.99) and Cereal (\$10.99/3 boxes).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, health and beauty aids, clothing items, and cleaning products.
- 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 or packaged.
- Some shelves are sparsely stocked or empty with items pulled to the front.
- No kitchen/prepared food area and no hot food sold.
- 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 second 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 Appellant's store 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 transactions were made from the accounts of individual SNAP households within a set time-period.**

There were 17 sets of 42 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time 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 Appellant, through counsel, contends that it has no control over the number of time that the recipient can use the card and whether the recipient using the card as the card does not have an identifying picture. Appellant, through counsel, also contends that it is not unusual for customers to request their order be billed in smaller amounts. With regard to these contentions, it is important to note that the SNAP transactions identified 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 store's layout, the extent of the Appellant's stock and facilities and are indicative of trafficking. It is not considered a normal shopping behavior for SNAP recipients to make a series of purchases at a minimally stocked convenience store immediately before or after visiting a store with superior stock, greater variety and pricing such as supermarkets or superstores where these recipients also

shopped.

Appellant, through counsel, contends that customers will, on occasion, purchase a cheap item to view the receipt to check the balance. When the customer realizes there are additional SNAP benefits, it is not unusual for them to complete their purchase by purchasing other items in a separate transaction. Even though, as Appellant contends, some customers may break up their purchases into several transactions to check that their account balances are sufficient to cover the cost of the entire purchase, Appellant did not provide any evidence to substantiate that this was true of any of the successive transactions in question. Nevertheless, such an explanation does not explain, given the stock and operational makeup of Appellant's store, the large dollar amounts that are inconsistent with Appellant's stock and the amount of time between transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Additionally, the EBT point-of-sale machine is programmed to permit immediate balance inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances. Therefore, it is not necessary for customers to make a purchase just to find out what they have on balance in their SNAP benefit accounts. In addition, many of the questionable transaction sets cited were conducted at the beginning of the month when benefits likely were replenished and plentiful. It would be unusual for such customers to be concerned about their account balances with so many benefit dollars on hand.

Appellant, through counsel, provided a USDA report of Official USDA Food Plans: Cost of Food at Home at Four Levels U.S. Average for April 2018 through July 2018 and November 2018; its May 2018 through October 2018 Sales and Use Tax Returns and 550 pages of receipts many of which were faded and illegible, however these documents do not explain nor substantiate the transaction patterns in Attachment 1 of the charge letter.

Based on the analysis above and Appellant's failure to adequately show that all of the transaction sets were as a result of legitimate SNAP purchases, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transaction patterns cited in Attachment 1 evidence trafficking as the most likely explanation.

**Attachment 2 of the Charge letter - Excessively large purchase transactions were made from recipient accounts.**

There were 138 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large 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, through counsel, contends that the Attachment 2 purchases are not large when buying groceries for a family of 4. The purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could have easily been a result of the customer purchasing Red Bull at \$71.99 with other items like a bag of rice for \$45 or Enfamil for \$37.00. With regard to this contention it is important to note that Appellant submitted 10 black and white photographs of alleged stock consisting of a 50lb bag of rice at \$45.00, a large can of Nido at

\$39.99, A large bottle of Peanut Oil at \$39.99, a 20.7 ounce can of Enfamil at \$37.00, a 23.2 ounce can of Similac at \$37.00, a 50lb bag of Sugar at \$27.99, a 101 ounce bottle of Olive Oil at \$21.99, a sign in front of Red Bull at \$37.49 or 2/\$71.99 plus tax, a sign in front of Monster drinks at \$36.99 plus tax, and a sign in front of cases of Pepsi at \$14.99 plus tax. Although Appellant provided photographs of these items, they do not provide evidence that these items were available for purchase during the review period. It is important to note that the store visit photographs and documentation show no evidence that Appellant sold any items in bulk. There were not large bags of rice or sugar, no large bottles of olive oil or peanut oil, the product Nido was not present in the store, and there was no evidence of Red Bull or Monster energy drinks in any of the photographs of the shelves, coolers or storage area of the store. Moreover, the store visit reports indicates that the highest priced items in the store consisted of Scott Pete Polish Sausage (\$6.99), Enfamil Baby Formula (\$6.50), ice Mountain Water (\$8.99) and Cereal (\$10.99/3 boxes).

Appellant, through counsel, contends that customers save money when they buy promotions and they take advantage of soft drink and energy drink specials which allows them to obtain a lot of items for less. With regard to this contention and as previously stated, according to the store visit photographs and documentation, Appellant did not offer for sale any bulk items such as energy drinks or cases of soft drinks. Appellant's stock was minimal and did not offer any fresh or frozen produce and no fresh meat or seafood. A review of the legible purchase receipts provided showed that items purchased were consistent with the store's stock as depicted in the store visit photographs and did not corroborate Appellant's claims of bulk and high priced items in stock.

Retailer Operations also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis 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 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Cook County area of Illinois. This is another strong trafficking indicator.

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 the 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.

As 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.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recorded during the onsite visit to support such large transactions, the lack of evidence of invoices of food in inventory to cover Appellant's reasoning for the SNAP transaction totals for the review months, the lack of explanation 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 convenience stores in the State.

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 determined that Appellant's contentions did not outweigh the evidence in the record.

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 deemed pertinent in support of its position that Retailer Operations Division's 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.

Ownership has not provided sufficient evidence to rebut the convincing 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.

### **CIVIL MONEY PENALTY**

Appellant, through counsel, contends that disqualifying Fat Boys Mart from SNAP would be a significant disadvantage and hardship for both local and distant customers as they will no longer have access to a conveniently located grocery store. With regard to this contention, the record reflects that 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 dated December 14, 2018. 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.

In further regard to civil money penalty assessments in lieu of disqualification, Part 278.6(f)(1) of the SNAP regulations provides for such assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to assessments thereunder: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case. Hence, 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**

Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Fat Boys 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 Fat Boys 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

July 22, 2019