

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

**Food City Express Mart,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0224718**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance (“ROC”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Food City Express Mart (“Appellant”).

**ISSUE**

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on April 14, 2020.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 February 3, 2020, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC's charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant's contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated April 14, 2020. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On April 22, 2020, Appellant appealed the ROC's determination and requested an administrative review of this action. The appeal was granted.

### STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

### CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) 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 engaged in trafficking of SNAP benefits.

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 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(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification . . . . The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . .

7 CFR § 278.6(c) reads, in part:

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) of this section, 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, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, 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 . . . .”

Also at 7 CFR § 271.2, eligible food is defined as:

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 § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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 CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from July 2019 through December 2019. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- Multiple transactions made from the same accounts in unusually short time frames;
- Transactions that depleted the majority or all of a recipient's monthly SNAP benefits made in unusually short timeframes; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- Appellant is the largest store within five miles.
- Many of Appellant's customers are retired. Some visit multiple times in a day just to spend time and buy lottery tickets.
- Appellant cannot limit transactions by SNAP participants.
- Appellant buys bulk items for customers and delivers them to their doorsteps.
- Appellant carries a large variety of inventory.
- Some customers make a purchase and then purchase additional items.

In support of its contentions, Appellant provided the following documentation:

- ~12 store pictures;
- ~Nine pages of end-of-month summaries; and,
- ~158 store receipts.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## ANALYSIS AND FINDINGS

### Store Characteristics

In reaching a disqualification determination, the ROC considered information obtained during an October 24, 2019 store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 4,300 square feet with 100 square feet of food storage outside of public view;
- Available inventory of SNAP-eligible food items showed stock composed predominantly of inexpensive items, which is typical of a small grocery store;
- Two cash registers and one electronic SNAP terminal device;
- Two shopping carts and four hand baskets;
- Scanners and no conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

In addition, the store's checkout counter space area was cluttered, small and surrounded by plastic barriers allowing very little surface area to place large purchases and making it impractical to process more than one customer at a time.

Appellant contends it carries a large variety of inventory. Appellant stock is typical of a small grocery store. There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

### Repeat Transactions by the Same Household

Attachment 1 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Violating stores may conduct multiple transactions from the same household account 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to avoid the detection of single, high-dollar trafficking transactions. There are 113 repeat transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) included in this document.

The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

Appellant contends it is the largest store within five miles. The Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant, including a medium grocery store and a superstore. There is no basis for unusually high customer

attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

Appellant contends some customers make a purchase and then purchase additional items. Customers sometimes forget an item or see something at the checkout and decide to purchase it after already having completed a transaction. In such instances, it is reasonable to expect the subsequent purchase would be for a nominal amount. This is because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. Also, forgotten goods purchased immediately after a prior transaction typically consist of only one or two items. However, the subsequent transactions exceeded any minor amount. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction total.

Appellant asserts that many of its customers are retired and some visit multiple times in a day just to spend time and buy lottery tickets. While there are legitimate reasons why a SNAP recipient might return to a small grocery store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a small grocery store. Spending sizable portions of one's SNAP benefit allotment in a small grocery store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in a small grocery store should be both rational and compelling. Appellant's explanation is neither.

### **SNAP Benefit Depletions**

Attachment 2 to the charge letter documents the same household exhausting all or nearly all its benefits in rapid order. There are 80 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** included in this document.

In some cases, SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week of the month. It is highly implausible that customers would desire, or be able, to regularly conduct large transactions that deplete balances to within pennies of a zero balance. The likelihood that these transactions were the result of the legitimate sale of only 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, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket.

It is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a small grocery store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or a single day. Depleting a large portion of one's SNAP balance early in the benefit month, leaving little to purchase food for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

### **Large Transactions**

The food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. It is rare for a small grocery store such as Appellant's to have purchases like those included in Attachment 3 to the charge letter. This attachment cites 234 EBT transactions during the six-month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Additionally, many of the charge letter transactions arrive at, or cluster around, certain dollar amounts in \$5 increments (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**). Households typically shop to obtain a certain mix of food items, irrespective of the total cost (other than to remain within allotment balances), and do not strive to achieve a particular total. The purchase amount of eligible food items typically approximates a random total. In contrast, firms facilitating trafficking tend to concentrate transactions at particular dollar amounts. In the absence of any compelling rationale to the contrary, the pattern of clustering transactions around certain dollar levels is implausible and indicative of transaction structuring and SNAP-benefit trafficking.

These transactions significantly exceed the county's average SNAP transaction, which was \$7.87 for this type of store during the six months of the review period.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant's average transaction is significantly higher than the county's average transaction. As previously stated, Appellant has a limited food stock typical of a small grocery store and does not have any features that would induce people to spend substantially more than the typical small grocery store purchase amount.

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<sup>1</sup>U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to six SNAP-authorized small grocery stores located nearby. Appellant's large SNAP transactions during the analysis period were nine times large than the next highest comparable firm.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **No Special Services**

Appellant maintains that one of the reasons for the large transactions is that it buys bulk items for customers and delivers them to their doorsteps. The store visit documentation states that Appellant does not take special orders nor does it offer delivery. Appellant did not provide any evidence in support of its contention. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **No Control Over Benefit Use**

Appellant insists that it has no control over how and when SNAP customers spend their benefits. In truth, SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use. Rather, they display characteristics not typically found at small grocery stores and are indicative of trafficking.

### **Receipts**

Appellant provided 36 pages of register receipts to support the validity of its transactions. However, the register receipts provided by Appellant contain unusual characteristics that call into question the legitimacy of these receipts. The register receipts do not explain the questionable transactions at Appellant.



## Summary

The ROC determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROC's assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROC considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability and characteristics of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROC's determination that Appellant most likely trafficked in SNAP benefits. 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 must disqualify the firm permanently.

## CIVIL MONEY PENALTY

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of February 3, 2020. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROC. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Office of Retailer Operations and Compliance to deny Appellant a civil money penalty is sustained.

## **CONCLUSION**

The record has yielded no indication of error in the finding by the Office of Retailer Operations and Compliance that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Food City Express Mart from participating as an authorized retailer in SNAP is sustained.

## **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 Appellant desires a judicial review, 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 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

June 8, 2020