

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

**Graham's Party Store,**

**Appellant,**

**v.**

**Case Number: C0211807**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that the Graham's Party Store (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 the 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 (FNS).

**CASE CHRONOLOGY**

By Charge letter dated September 10, 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. Counsel responded to the Charge letter in writing on September 24, 2018.

Retailer Operations issued a Determination letter dated October 25, 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 regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the 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 dated October 31, 2018, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated November 7, 2018. Counsel provided additional information by letter dated November 7, 2018.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). 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 February 2018 through July 2018. The patterns of transaction characteristics indicative of trafficking are:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

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

- The prices of products are relative in regards to party stores. Infant formula is \$25.99, a gallon of milk is \$3.99, chips for \$4.69, and a box of cereal is \$4.99. The store does not discount the listed cost of their wares, consequently purchases may seem excessive.
- The store is primarily in a residential area. Demand is high due to a depressed area where most residents possess a bridge card and their primary means of transportation is to walk.
- Graham’s has been complying with SNAP regulations and has implemented an effective compliance program reviewing the Store Training Information and Video.
- I and my wife have diligently twice reviewed the SNAP training guide and video online.
- I am my wife can insure that we have not violated and will not violate the SNAP by exchanging benefits for cash or selling ineligible items.
- The attached photo shows a depleted liquor stock behind me.

Counsel submitted a two pages of 2017 W2 wage and tax statements, and some photos of the store interior. Counsel noted that sales evidence submitted covered January through September 10, 2018. However, the months of January, February, March, and April were not included with the submission. There were three copies each of reports for May, June, July, and August. August was not in the review period. Counsel provided a notarized affidavit a signed by the store manager and his wife on November 6, 2018 with two photos of posted USDA signs.

## 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 37 transactions in 18 sets conducted by 15 unique households (HHs). Multiple transactions within a set time period are a method stores use to avoid high dollar transactions and are indicative of trafficking.

Contentions:

- Residents purchase groceries in separate orders buying essentials first, then extras if enough is left on their card.
- They stop in to socialize, treating the store as their safe meeting place with the purpose of meeting other neighbors.
- They will usually make additional purchases while visiting or return for items that were inadvertently forgotten.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Retailer Operations determined this indicated that the recipient had most likely left the store, and made the explanation regarding essential and extra purchases during one visit less convincing.

An onsite visit was conducted May 4, 2018. Among other items, eligible inventory consisted of canned goods, bread, cereal, dairy products, condiments, deli products, baby formula, minimal fresh produce, soda, snacks, and candy. The owner states that he sells baby formula for \$25.99, however according to the store visit, which store personnel completed along with the contractor, the most expensive item in the store is baby formula for \$19.99. The firm did not sell fresh meat, poultry or fish, meat plans, frozen foods other than ice cream, baby food, or specialty and ethnic foods. The firm's ineligible items included: tobacco products, lottery, liquor and beer, health and beauty items, paper and cleaning products, and miscellaneous items. One shopping cart is seen in the store photos, but it had stock in it and did not appear to be for customer use. There is a photo of five handheld baskets, four with visible branding of different store names. The exterior signage seen is "Liquor Beer Wine Lotto" and there are many interior alcohol signs. The photos submitted by Appellant were dark, making them less useful.

Appellant has minimal counter space with a plastic barrier in front of a small ledge. There appears to be a revolving base to pass items through the barricade via a window cut-out. The store's logistics make large numbers of items purchased at one time a challenge. The sales figures provided by the owner support that in May, non-taxed grocery sales were 62% of gross sales, in June, non-taxed grocery sales represented 62%, and in July 2018 grocery sales made up 61% of gross sales.

The record shows that there are other authorized stores in proximity to Appellant. Within less than half a mile of Appellant there are four convenience stores, one combination/other store, and one supermarket. Within a mile radius of Appellant there are 18 authorized stores, including a super store. The data shows that 46% of the flagged HHs on this Attachment conducted a transaction(s) at a large grocery, supermarket, or super store, on the same day they conducted a SNAP transaction at Appellant, and 80% of the households did so within one day. Thus, recipients had access to, and did use other SNAP authorized stores. The record contains Retailer Operations' analysis of some recipient shopping histories that are unusual and suspicious. Appellant also had more flags on this Attachment at 18, than three local comparator convenience stores, one of which had zero transaction sets flagged, one with one set flagged, and the other with three sets flagged.

As noted, the sales spreadsheets, did not cover the months as stated by counsel. The months of the review period provided were May, June, and July. The grocery sales figures rose in each of the three months, then went down in August 2018. For the three review months, these sheets show total sales of non-taxable groceries at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and grocery cash payouts as 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The SNAP redemptions at Appellant for the three months, were lower each month than the grocery non-tax sales, and the grocery payout amounts on the advanced reports. Nevertheless, Retailer Operations found these figures suspect since Appellant did not appear to have the inventory in place to support the volume of grocery sales stated given the cash replenishment payouts reported on the monthly reports. No verifiable vendor documentation to support the acquisition of SNAP eligible foods was advanced by Appellant. The gap in monthly non taxed grocery sales and monthly cash payout amounts for groceries could be indicative of high food markups. No price lists were provided and no markup information was advanced. Retailer Operations did not find the data on the sales reports to disprove trafficking whereby SNAP sales of "groceries" are in fact cash exchanges for benefits with no or few groceries actually exchanged.

No federal business tax returns were provided to show carryover inventory data for the business. No banking records were provided. The owner provided no customer statements to support recipient shopping habits at Appellant. No itemized cash register tapes of purchases during the review months were advanced. As such, the preponderance of the evidence does not support that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than the result of trafficking.

**Attachment 2:** Listed are 296 transactions for amounts that exceed the average transaction amount for the same store type in the same state by three times or more.

Contentions:

- The sales show an increase in 2018, supported by the lack of EBT accessible sources in the neighborhood, leaving Graham's as the primary and most attractive, convenient resource available to satisfy their needs without traveling a distance, when many of them have no transportation.

- Graham's is currently only one of two stores within walking distance for residents that purchase their necessities using SNAP benefits. This is indicative of the rise in sales.
- Because of the depressed area and limited transportation, residents quite often purchase the majority of their weekly necessities at Graham's, frequently returning to purchase additional items and often exhausting their benefits in just a couple of visits.

**5 U.S.C. § 552 (b)(7)(E).** Eighty-two percent of the HHs flagged on this Attachment made a transaction(s) at a large grocery, supermarket, or super store within one day of making a transaction at Appellant. Thus, SNAP recipients did access other authorized stores, and transportation did not appear to be a deterrent to the majority of the flagged households to transact benefits at other locations.

The record shows that in the original phone conversation with Retailer Operations, the respondent stated that one of his clerks may have been extending credit, a program violation. In his final response there is no claim that any credit was extended. The owner has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. Appellant did not submit sufficient documentation timely to show that it met the four criteria to qualify for a CMP. 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, as well as shopping histories, an onsite visit report, and other assessments provided evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations. In the absence of a preponderance of evidence of the legitimacy of the transactions presented by Appellant, 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 also proper per the applicable regulations. Therefore, 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

January 31, 2019