

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

Haney's One Stop,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0216906

FINAL AGENCY DECISION

It is the decision of the USDA that there is not sufficient evidence to support a finding that Haney's One Stop, (Appellant) should be permanently disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for trafficking. The permanent disqualification determination by the Office of Retailer Operations and Compliance (Retailer Operations) is hereby reversed.

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 (FNS).

CASE CHRONOLOGY

By Charge letter dated May 22, 2019, Retailer Operations informed the owners 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 record supports that Appellant replied in writing to the Charge letter on July 1, 2019. Retailer Operations issued its Determination letter dated August 12, 2019, that informed the owners that Appellant was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1), of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the regulations. Retailer Operations deemed the firm was not eligible for a CMP because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

Counsel requested administrative review by letter dated August 22, 2019. The appeal was granted by letter dated September 11, 2019. Counsel made a FOIA request on October 1, 2019. Counsel agreed to payment of the FOIA fees on November 6, 2019. The FOIA office provided the FOIA reply dated November 12, 2019. Counsel requested, and was granted an extension to provide his brief, which was emailed on December 5, 2019. The brief was provided to Retailer Operations on that date. Retailer Operations provided its assessment to this office on January 15, 2020.

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, credible 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 in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "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, and 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 transaction patterns were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of August 2018 through January 2019.

The patterns of transaction characteristics indicative of trafficking were:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. The store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

Attention has been given to all contentions presented in rendering this decision, even those not listed.

- Appellants have shown by a preponderance of the evidence that the transactions cited in the Charging Letter are more likely than not innocent transactions rather than trafficking.
- Ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the USDA’s hypothesis that trafficking is occurring at the Store.
- The Store clearly had more than enough inventory for the amount of transactions conducted with SNAP benefits during the review period.
- In further support of the innocence of the SNAP transactions are the Appellants’ Sales Tax Return for each month of the Review Period. These documents are in line with the SNAP transactions reflected in the Department’s CAD and support the innocence thereof. Any deviation from the total amount of SNAP redemptions reflected in the CAD and the tax returns are a reflection of the merchant service fees which are taken out of the Store’s

transactions prior to the Appellants receiving the SNAP funds in their account as well as SNAP transactions which were conducted at the end of the month and thus rolled over into the following month's reported sales.

- The innocence of these transactions is further supported by the Store's SNAP customer affidavits submitted herewith, wherein six SNAP participants attest to making multiple purchases at the Store within the same day, and the other two attest to making multiple purchases within one day.
- The transactions consisted of innocent transactions, made 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Store, are explained by (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; (3) the participant making a purchase, returning home, and then returning to the Store to make a second purchase; and/or (4) the logistics of the Store.

APPELLANT'S EVIDENCE

- 536 pages of vendor inventory invoices, many pages are blank and many have multiple invoices of eligible and ineligible items.
- Copies of 18 pages of state sales tax returns.
- Eight SNAP customer statements.
- A one-page price list of seafood and poultry prices at Appellant labelled "RAW MEAT PRICES."
- Another single page price list formatted with the store's name and address with the same items and prices as initially submitted by the owners.
- Copies of six pages of transaction management system invoices from U.S. Payments for each of the review months.
- Copies of 12 pages of daily ATM Deposit Inc. terminal spreadsheets for each of the review months.
- A four page store handbook on policies and code of conduct at Appellant.
- Nine signed/dated statements that employees received the handbook.
- Four page article "Know Your Core, Protect Your Core."
- One copy of an FMI study "U.S. Grocery Shopping Trends, 2016."
- One copy of a 2016 USDA report on foods typically purchased with SNAP.

ANALYSIS AND FINDINGS

The primary issue for consideration in this case is whether or not Retailer Operations established by a preponderance of the evidence, that Appellant engaged in trafficking which warrants a permanent disqualification. There is no way for this review to definitively conclude that trafficking did not, at any point, occur at the firm. In light of the assessment of the evidence in the record, this reviewer finds that there are other legitimate explanations, besides trafficking, that could account for the transaction patterns at Appellant.

Please contact Angelia Bass at (615) 768-1168 regarding reinstatement and operations questions.

CONCLUSION

It is the determination of this review that the Appellant has met the burden of supporting, by a preponderance of the evidence, that the transaction patterns listed in the Charge letter were more likely than not, allowable SNAP purchases of eligible foods. Therefore, the determination to impose a permanent disqualification against Appellant for trafficking is herein reversed.

RELEASE OF INFORMATION

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

February 25, 2020