

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

Humaid Food Mart,

Appellant,

v.

Case Number: C0202685

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Humaid Food Mart as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Humaid Food Mart.

AUTHORITY

7 U.S.C. § 2023 and its 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

In a letter dated November 9, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2017 through September 2017. The letter noted that the penalty for

trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered via UPS on November 10, 2017.

In a fax sent on November 14, 2017, the Appellant denied trafficking in SNAP benefits. The Appellant generally stated that the irregular transactions were normal business practices based on customer shopping habits and routine store sales. The Appellant stated that it would retrain all store employees to ensure 100 percent compliance. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated February 22, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i). However, the Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked March 1, 2018, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated 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.

7 U.S.C. § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 278.6(e)(1)(i) states:

FNS shall ... disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 defines trafficking, 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

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

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(i) states, in part:

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through September 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple consecutive purchase transactions were made too rapidly to be credible. This attachment lists 28 pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits in which consecutive transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 62 sets of 151 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 3:** In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. This attachment lists 13 sets of 51 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 4:** Excessively large purchase transactions

were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- All transactions cited in the charge letter were legitimate.
- Regarding Charge Letter Attachment 1, nearby customers tend to use their cards multiple times within a few hours or throughout the day. Customers share their SNAP benefits with relatives and Humaid Food Mart is the only store in the neighborhood where people can shop to meet all their daily needs.
- Regarding Charge Letter Attachment 2, these represent the store's daily customers and the store meets all their food needs. They use their cards throughout the day while sometimes sending their kids or a relative to shop.
- Regarding Charge Letter Attachment 3, most transactions take place during the same time period due to the store business hours and having a butcher on the clock. This also relates to the store's food deliveries and meat trucks. People are aware of these delivery times so they show up at the same time.
- Regarding Charge Letter Attachment 4, the store has meat specials ranging 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store has also allowed its loyal customers to maintain credit accounts and those lines 5 U.S.C. § 552 (b)(6) & (b)(7)(C). All of these credit purchases are for food only.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Humaid Food Mart for the SNAP on January 5, 2016. The owner signed the SNAP application for the store on December 10, 2015 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange

for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits for ineligible non-food items.

During the review period of April 2017 through September 2017, the Retailer Operations Division classified the store as a convenience store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 27, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Humaid Food Mart is approximately 1,125 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) visible point-of-sale device and reported that it had two (2) registers but these were not visible in the store photographs.
- The store did not have an optical scanner or conveyor belts at the checkout.
- There was no evidence of a wholesale business.
- There were numerous empty and partially filled shelves within the store.
- Store personnel confirmed that there was a small food storage space of 220 square feet. The store room housed three (3) chest freezers with frozen meat, fish and shellfish. Some of the storage conditions appeared to be unsanitary. No food was stored offsite.
- Store personnel confirmed that Humaid Food Mart did not provide delivery services or take online or telephone orders.
- There was a kitchen area and exterior advertisement for hot food, but store personnel stated that the store no longer sold hot food.
- The store did sell a number of meat specials, but staple food was otherwise limited.
- The checkout area consisted of a small countertop with empty space of no more than two (2) feet by two (2) feet in size. The countertop was crowded with displays of gum and candy and other products. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods, but also contained a significant selection of fresh meat packages. The store also sold snack foods and other accessory food items such as

coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol, mobile phone accessories, automotive products, paper goods, cleaning products, gift items and party goods. Store personnel confirmed that the most expensive items sold by the store was a 40 pound meat special at \$89.95; a 25 pound meat special at \$72.99; a 20 pound meat special at \$59.95; and a 15 pound meat special at \$43.99. Store visit pictures show that some of the meat package specials were given names or phrases that could be considered offensive by many shoppers as they involved racial and other slurs. Although much of the food stock was typical of what would be carried by a convenience store, given the available fresh meat inventory as noted above, the store would be likely to have SNAP transaction patterns somewhat higher than other convenience stores, but not likely higher than a small grocery store that carries fresh meat or larger stores such as a supermarket or superstore.

Credit Accounts

The Appellant states that at least some of the irregular transactions may be due to the store accepting SNAP benefits as repayment on credit accounts. The SNAP regulation at 7 CFR § 278.6(e)(4)(ii) states that a firm shall be disqualified for one year if it accepts SNAP benefits as repayment on credit accounts. However, the Appellant has provided no evidence that Humaid Food Mart maintained credit accounts other than the Appellant's unsubstantiated claim.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. The Appellant has not provided such evidence. In conclusion, there is insufficient evidence to support the Appellant's contention that the irregular SNAP transactions cited in the charge letter are due to repayments on credit accounts.

Multiple Transactions made too Rapidly to be Credible

Charge Letter Attachment 1 lists 28 pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The second transaction in each set was a large dollar transaction which greatly exceeded the average transaction at a convenience store in Louisiana during the review period. Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator.

The Appellant states that nearby customers tend to use their cards multiple times **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Allegedly, these customers share their SNAP benefits with relatives and Humaid Food Mart is the only store in the neighborhood where people can shop to meet all their daily needs. These statements do not directly address how the store had the ability or technology to conduct rapid and consecutive transactions as it only had a single point of sale terminal, and did not have optical scanners, conveyor belts, shopping carts, shopping baskets, or sufficient space at the checkout for stacking large food purchases.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). While the purchase of a meat package could explain the lower dollar transactions, it is unlikely to explain the larger dollar transactions as these amounts are much greater than the average transaction for a meat specialty store, supermarket or superstore. The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases in such a short time frame. The fact that the store did not have an optical scanner would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

Despite the store's limitations in counter space, technology and infrastructure, it was rapidly processing consecutive SNAP transactions which included an excessively large transaction atypical of a SNAP authorized Louisiana convenience store or even a meat specialty store, supermarket or superstore. The Appellant did not offer a credible explanation of how it could conduct such rapid and consecutive transactions. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 1 are more likely than not the result of the store trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted 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 nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge

Letter Attachment 2 lists 62 sets of 151 transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E). It is not credible that a convenience store would have suspicious SNAP transactions greater than a meat specialty store, supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant states that these transactions represent the store's daily customers who use the store to meet all of their food needs. These customers allegedly use their cards throughout the day while sometimes sending their kids or a relative to shop.

The Appellant's contention does not provide a credible explanation for the transaction patterns cited in Charge Letter Attachment 2. The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or shopping baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Exhaustion of Benefits

Charge Letter Attachment 3 lists 13 sets of 51 transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant contends that most transactions take place during the same time period due to the store business hours and having a butcher on the clock. Allegedly, the store customers are aware of the food and meat truck delivery times so they show up at the same time to conduct transactions.

The Appellant's contention does not sufficiently explain the irregular transactions cited in Charge Letter Attachment 3. SNAP recipients do not normally exhaust or nearly exhaust their benefits in a single large transaction or through multiple transactions within a short period of time such as a single day. For example, benefits from one household were spent down in nine (9) transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This cannot be explained by customers shopping at the same time or coming in for a scheduled meat delivery.

A government report on SNAP shopping patterns 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 takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. 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 a single day at one store. Depleting one's entire allotment in a single day, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

In addition, the Appellant does not explain how the store is conducting transactions that are many times higher than the average for a SNAP authorized Louisiana meat specialty store, supermarket or superstore. Based on a preponderance of the evidence this irregular transaction pattern is more likely than not the result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted 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 nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 4 cites 600 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The Appellant states that the store has meat specials
5 U.S.C. § 552 (b)(6) & (b)(7)(C). Regarding this contention, during the store visit report, store personnel identified the most expensive meat package as a 40 pound meat special at \$89.95. There is no evidence that the store had meat packages more expensive than that amount. As noted, although the Appellant store likely had transactions higher than the average for a Louisiana convenience store, the sale of meat packages would still not explain why the transactions in Charge Letter Attachment 4 were so much larger than the average for a meat specialty store, supermarket or superstore.

The Appellant states that Humaid Food Mart is the only store in the neighborhood where people can shop to meet all their daily needs. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area or if there are no other stores selling the same type of specialty food. However, agency mapping systems show that there are 17 SNAP authorized stores within a 1.5 mile radius of Humaid Food Mart including two (2) medium grocery stores, a large grocery store, a supermarket and a superstore. All of these stores sell fresh meat. Therefore, a lack of access to other stores does not appear to explain the excessively large transactions at Humaid Food Mart.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Humaid Food Mart compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores including stores that sold fresh meat and fresh produce. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at Humaid Food Mart on the same day or within a few days of shopping at these other stores. It is highly unlikely that a convenience store, even one that sold meat packages, would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores with a superior selection and variety of staple foods.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

The 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. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “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.” [Emphasis added.]

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. Therefore, 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

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations 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. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Humaid Food Mart, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

May 4, 2018