

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

IGA Foodliner Greenback,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0208095

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the record indicates that IGA Foodliner Greenback (Appellant) likely committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support 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).

ISSUE

The issue accepted for review is whether Retailer Operations took action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278.6(a), (c), and (e)(1) in its administration of 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 FNS.

SUMMARY OF THE CHARGES

Appellant was charged to be trafficking based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the five month period from January 2018 through May 2018. This involved two SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP HHS within a set time period.
- There were excessively large purchase transactions made from recipient accounts.

CASE CHRONOLOGY

In a letter dated July 17, 2018, Retailer Operations charged Appellant with trafficking, as defined in § 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of January 2018 through May 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that 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 responding owner replied to the charges by letter dated July 26, 2018, stating that he was the owner of the store and the other owner left the store in February 2017. He stated that he had been away from the store for five years (2012-2017), came back when the other owner left, gave up the WIC Program upon his return in 2017, and hoped to cut the inventory and sell the store. He admitted to violating SNAP by offering credit to his customers in exchange for SNAP benefits, but denied trafficking.

On August 2, 2018, Retailer Operations sent Appellant a Credit account violation letter, notifying Appellant that the acceptance of SNAP benefits as payment for items sold to households (HHs) on credit is a violation of SNAP regulation § 278.2(f), and a firm that commits such violations shall be disqualified from participation for a period of one year. The Credit account violation letter requested Appellant provide documentation to identify specific credit accounts, along with corresponding dates and amounts within 10 calendar days of receipt of the letter.

By letter dated August 11, 2018, the responding owner provided a handwritten ledger showing transactions by month and total, and cash register receipts taped to pieces of paper with handwritten notes for each month in the review period.

The record shows that Retailer Operations phoned the responding owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), on September, 23, 2018, regarding the disassociation of said inactive owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was informed that he had to submit documentation to FNS removing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as a listed owner. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated he did not have any business documentation associating 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with the store, nor did he have business documentation to disassociate him. The record shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was associated as an owner of Appellant on its SNAP application form, and given that no documentation has been advanced that he is no longer an owner, he remains as a named owner for the purposes of this review of the imposed sanction.

After considering the responding owner's reply and the evidence, Retailer Operations issued a Determination letter dated November 9, 2018. The Determination letter informed the owners that Appellant was permanently disqualified as a SNAP retail food store in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The Determination letter also stated that Appellant was not eligible for a trafficking CMP, because Appellant failed to submit sufficient evidence to

demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated November 21, 2018, the responding owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated November 29, 2018.

STANDARD OF REVIEW

In appeals of 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 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under 7 CFR. Parts 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: "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(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food."

7 CFR § 278.2(f) states: "Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a HH on credit."

7 CFR § 278.6(b)(2)(ii) states: "Firms that request consideration of a CMP 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 CMP 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 CMP 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.”

APPELLANT’S CONTENTIONS

The following represents a summary of Appellant’s contentions in this matter. In reaching a decision, full consideration has been given to all contentions presented, including any not specifically recapitulated or referenced herein. Contentions are written as presented in the record:

- I was away from the store for five years (2012-2017) until 5 U.S.C. § 552 (b)(6) & (b)(7)(C)/my son-in-law decided to leave. I came back hoping to cut inventory and sell the store. The store is a small supermarket (100 x 70 feet) and we sell soft drink by cases, cakes by cases, cans good, coffee, milk, bread, lunchmeat, fruit and vegetable, cereal, cookies and cracker, all kind of food items, frozen food, ice cream, and dairy. We shut down the meat department because we were losing money.
- We still use the old fashion cash register. We ring the merchandise and we swap the whole amount at the credit machine; no connection between the cash register and the credit card machine; that way the amount swaped [sic] look too big.
- I violated the SNAP by accept payment with EBT for food. I open credit line for my loyal customers. They charge for the whole month and pay with EBT and this is violation, and that explains the big amount of purchases with EBT. Most of the customers don’t charge too much. After they paid the amount they owed, they shop more or they come back later or the next day or after two days; sometimes they have a balance from the month before; they paid some of it; the store is in the country at busy highway, and those people live far from the store in the country, and they have children and they need food for their children.
- Probably when the inspector came, the inventory was down, but we always replace what we sell daily. I buy food from Sam’s Club, Walmart, ALDI, and any super store if they have specials because we don’t have wholesalers with reasonable prices; I make daily trips to those supermarkets.
- I average about 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (just for the large purchases), because some customers found jobs, they are not eligible for SNAP and as long as I stay in business I will be very careful and I will prevent any violations. I violated the SNAP, but not with trafficking. I have grocery store, not place for exchange of money. I deny that. If those people exchange EBT with cash, why do they still get it? Those people are going to be my witnesses.

In support of Appellant’s contentions, the responding owner sent a letter dated December 17, 2019, reiterating some of the same contentions above, and also stated that he did not have the money to meet the amount of a CMP. He included copies of three letters from the Tennessee Department of Agriculture, where he met the requirements of the Youth Access to Tobacco and Vapor Products Act, as proof that he adheres to the law.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, Retailer Operations considered information obtained during an April 17, 2018, 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, characteristics, and conditions:

- Convenience store approximately 7,000 square feet in size.
- Limited checkout area with one cash register, one POS terminal, and no optical scanners.
- Ineligible items included tobacco products, automobile products, health and beauty aids, paper goods, cleaning products, housewares, gift items, party goods, and souvenirs.
- Sign posted for lottery, but does not sell lottery.
- The store is not selling primarily one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables.
- No meat bundles, seafood specials, and/or fruit and vegetable boxes.
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.
- Hot foods were not sold.
- No deli or prepared food section.
- No unusual pricing structure, such as prices ending with \$.00 cents.
- Transactions are not rounded up or down at the checkout counter.
- Many empty coolers and shelves.
- Dusty cans/packages and faded/missing labels.
- Food was severely expired.
- Poor lighting.
- Ceiling falling through with holes.
- Rusty equipment.
- Garbage in back area of store.
- Evidence of rodents; actual rodent seen.

The inventory of SNAP eligible food at the time of the store visit was limited. Given the available inventory, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar nearby convenience stores.

Credit Transactions

The responding owner contends that the questionable SNAP transactions outlined in the Charge letter are the result of accepting SNAP benefits as repayment on credit accounts from recipients upon receipt of their monthly EBT benefit allotments. He admits to violating SNAP by offering credit accounts, but denies trafficking, and states he has witnesses.

To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the unusual transactions occurred so that a comparison can be made with transactions outlined in the Charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing the more egregious violation of 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. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In support of the responding owner's admission to accepting SNAP benefits for payment on credit accounts, a Program violation he advanced a handwritten credit ledger for each month in the review period, chit/register receipts taped to pieces of paper with handwritten notes, and a handwritten document showing transactions by month with totals. The handwritten credit ledger includes each month in the review period and the columns track date, amount, and transaction number that coincides with the flagged transactions listed in the Charge letter. According to the credit account ledger advanced, 100% of the transactions listed in the Charge letter are credit accounts. The record shows that Retailer Operations staff phoned the responding owner on September 13, 2018, to confirm that all of the transactions listed on the credit ledger provided were conducted on credit. The responding owner stated this was correct. This seems to conflict with the responding owner's claim that most of the customers don't charge too much (food items on credit).

The credit ledger provided does not list any SNAP HH identifying information. The credit ledger does not include which credit account amounts were paid by the HH or note amounts still pending. The cash register receipts provided do not prove these are credit transactions nor does the handwritten document showing transactions by month by total. No SNAP recipient affidavits were provided to attest to shopping patterns at the store. Insufficient compelling evidence was advanced to support the responding owner's denial of trafficking. The burden to disprove trafficking rests with Appellant.

Charge Letter Attachments

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 48 transactions in 19 sets of two or more transactions conducted by 7 individual SNAP HHs within a set period of time. Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking.

The record supports that there are at least 18 SNAP authorized retail food stores within a 10-mile radius of Appellant; including 14 convenience stores, 3 supermarkets, and 1 super store. The data shows that 100% of the SNAP HHs listed made a transaction at a large grocery, supermarket or super store within one day of making a transaction at Appellant. Thus, the data supports that the SNAP HHs had access to, and did transact benefits at other authorized SNAP retail food stores.

Retailer Operations compared Appellant's number of transactions flagged on this Attachment to a similarly stocked, same type store, 5 U.S.C. § 552 (b)(7)(E). This is irregular.

With regard to the responding owner's credit extension contention, as noted previously, the information he provided is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP recipients.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is also available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain SNAP rules.
- Information that the store owners are responsible for carefully reviewing the Program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action. Given the lack of detail in the advanced evidence regarding purported credit, Retailer Operations was not convinced that the questionable transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions.

Attachment 2: Listed are 76 transactions as large as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), made by 12 unique SNAP HHs, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the review period, the average SNAP transaction amount for a convenience store in Loudon County, Tennessee was \$8.09. The average SNAP transaction amount in the Attachment is more than 11 times larger than the average purchase amount for this store type.

The store visit report does not indicate that Appellant sold any specialty items. Retailer Operations' review of the store visit photographs revealed that there were no eligible foods at Appellant that could not be obtained at other SNAP authorized retail food stores in the area. The Attachment confirms that HHs that made SNAP transactions at Appellant also conducted transactions at large grocery stores, supermarkets, and super stores. It is improbable that HHs would choose to transact large dollar amounts of SNAP benefits at Appellant. The record supports that the store was minimally stocked, has evidence of empty coolers and empty shelves,

dusty cans, severely expired food items, evidence of rodents, and had visibly poor interior conditions. The responding owner provided no price list of eligible foods at the store. No store inventory receipts were provided to substantiate the store's food stock to support the large transaction amounts.

The record shows Retailer Operations did a comparison of Appellant's SNAP redemptions to that of a nearby like type store for the review period. The comparator store did not exhibit the same irregular transaction patterns listed in the Charge letter for Appellant, even though it is located in proximity to Appellant, and would likely share the same SNAP customer base and shopping patterns. This is an indicator that trafficking is more likely than not occurring at Appellant.

With regard to the responding owner's credit extension contention, as noted previously, the information he provided is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP recipients.

Other Contentions

The responding owner contends that the store SNAP redemptions are less than the redemptions reported in the Charge letter, because some customers found jobs and they are not eligible for SNAP. The Attachments represent two different SNAP redemption patterns, and transactions often repeat on multiple Attachments.

Lastly, the responding owner contends that he adheres to the law. He provided copies of three letters from the Tennessee Department of Agriculture, to prove that he is compliant in meeting the requirements of the Youth Access to Tobacco and Vapor Products Act. However, being compliant in other programs does not constitute valid grounds for mitigating the impact of the present determination of SNAP trafficking.

CIVIL MONEY PENALTY

7 CFR § 278.6(i) specifies the four criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. The responding owner did not submit documentation to support a trafficking CMP. Accordingly, Retailer Operations correctly determined that Appellant did not qualify for a trafficking CMP in lieu of a permanent disqualification.

CONCLUSION

The responding owner admitted to allowing violative credit, a sanctionable offense. However, the credit documentation advanced was not detailed such that it more likely than not supported the claim of credit to explain the Attachments, rather than the trafficking charged.

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that

the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Based on a review of all of the evidence in this case, it is more likely true than not true that Program violations did occur as charged by Retailer Operations.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against Appellant, IGA Foodliner Greenback, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this Decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in § 279.7 of the SNAP regulations. 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 owners 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 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.

Kim Dameron
ADMINISTRATIVE REVIEW OFFICER

July 25, 2019