

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

J Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219569

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 J 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, when it imposed a permanent disqualification against J 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 August 14, 2019, 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 January 2019 through June 2019. 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 to the Appellant by UPS on August 16, 2019.

The Appellant responded to the charges in a phone call on August 23, 2019 and also provided an e-mail on September 3, 2019 containing cash register transaction reports. Lastly, the Appellant provided a package containing a large quantity of invoices and a Food Service Health Inspection Report which was received on September 9, 2019. The Appellant stated that store customers come in with laundry carts or wheelchairs with baskets and purchase a large amount of groceries. The Appellant also provided its retail markup percentages for tobacco, non-food items and food items. The Appellant did not request a trafficking CMP in lieu of a permanent disqualification.

After considering the evidence and the Appellant's responses, the Retailer Operations Division issued a determination letter dated September 19, 2019. The 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). 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. The determination letter was delivered to the Appellant on September 20, 2019.

In a letter postmarked September 25, 2019, 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, 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 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....

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).

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from January 2019 through June 2019. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 2:** Large SNAP transactions were made from recipient accounts based on the observed store characteristics and recorded food stock. 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:

- The store is near a beach and park and people come to the store from all over.

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

FNS authorized J Mart for the SNAP on April 19, 2018. During the review period of January 2019 through June 2019, J Mart was classified as a convenience store. The owner signed a SNAP application for the store on March 26, 2018 and acknowledged she 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 as repayment on credit accounts or in exchange for ineligible items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 26, 2019 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:

- J Mart is approximately 1,000 square feet in size.
- The store did not have any shopping carts and only six (6) handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device for purchases. The store utilized an optical scanner at checkout.
- There were no large bulk foods, expensive international or specialty foods that might sell for a high price. There were no fresh meat/poultry/seafood bundles or large boxes of fresh fruit and vegetables for sale.
- There was an unused cooler in the back of the store.
- The store did not keep food offsite and there was no storage area with food outside of customer view. There was an unused cooler in the back of the store.
- There was no conveyor belt at the checkout area.
- The checkout area consisted of a small clear space on a display counter which was otherwise covered by candy, snack foods and non-food items. The small clear space for stacking purchases was approximately 1.5 feet by two (2) feet. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged goods. There was no fresh meat, fish, poultry or produce for purchase. The store also sold a large amount of inexpensive accessory food items such as snack foods, ice cream, candy, potato chips, coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The ineligible items sold by the store included lottery tickets, tobacco, automotive products, health and beauty aids, cleaning products, paper goods, cleaning products, housewares, pet food and mobile phone accessories.

At the time of the store visit, the four (4) most expensive food items sold by the store were:

- six (6) stocking units of 48 ounce Maxwell House Coffee at \$15.99 each;
- four (4) stocking units of 64 ounce frozen beef burgers at \$12.99 each;
- six (6) stocking units of one liter olive oil at \$11.99 each; and
- seven (7) stocking units of 3.25 ounce bags of jerky at \$7.99 each.

Given the available inventory and store layout as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Multiple Transactions by the Same Household within a Set 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 this convenience store's stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E) It is not credible that a convenience store with a limited selection of inexpensive staple foods would have a series of suspicious SNAP transactions greater than a superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a set time period.

The Appellant stated that the store is near a beach and a park and people come in from all over to shop. This contention is not sufficient to rebut the determination of the Retailer Operations Division that the store was trafficking in SNAP benefits. The closest SNAP authorized competitor convenience store offered a greater depth and breadth of food inventory but did not have the same irregular transaction patterns as J Mart.

The evidence in the case file documents that it is unlikely that SNAP customers would shop at the store and purchase such a large volume of items multiple times during a set time frame. In addition, the store's small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store had only a limited amount of shopping baskets and no shopping carts for customer use. Shopping carts would be needed for customers to transport such a large volume of food within the store. There is insufficient evidence to support that customers are bringing in their own laundry carts (or wheel chairs with baskets) as suggested by the Appellant in reply to the charge letter. 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.

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 regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this convenience store's stock and facilities and are thus indicative of trafficking.

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

The store visit pictures show that the store layout is not conducive to these excessively large transactions. There were no shopping carts for transporting food around the store. The checkout counter space is very limited and not conducive to stacking multiple items for purchase. In addition, the store's stock is mainly inexpensive canned and packaged goods, snack foods, single serving food items and accessory food items. The store visit report and pictures do not show that the firm offered any specialty or international items, fresh meat/seafood bundles, or boxes of fresh produce that would justify high dollar transactions atypical of a convenience store. The Retailer Operations Division properly considered these factors in making its determination that the transaction patterns cited in the charge letter are, more likely than not, due to trafficking.

The cash register transaction reports provided by the Appellant do not identify what items were purchased and offer no evidentiary value in rebutting the case made by the Retailer Operations Division.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined through agency mapping systems that within 2.5 miles of J Mart there are 21 actively redeeming SNAP retailers, including 12 other convenience stores, a farmers market and three (3) supermarkets. While most of these stores are located across a river, the SNAP customers who have conducted suspicious transactions at J Mart are also shopping at these other stores.

One of the SNAP authorized supermarkets is only 0.85 miles away from J Mart. A government report¹ on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store like J Mart with a limited selection of staple foods.

The case record also documents that the Retailer Operations Division conducted a detailed analysis of three (3) households with irregular transactions identified in the charge letter to analyze their shopping patterns at J Mart compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to larger and better stocked stores, these sampled households conducted excessively large transactions at J Mart on the same day or within a few days of shopping at a supermarket or superstore. It is highly unlikely that a convenience store with more limited staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

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 support the Retailer Operations Division determination. There is insufficient evidence to support that SNAP customers are bringing in their own laundry carts (or wheel chairs with baskets) as suggested by the Appellant in reply to the charge letter. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Invoices

The Appellant submitted its purchase invoices/receipts from the review period in an attempt to show it had sufficient food inventory to support its SNAP redemptions. The case record documents that the Retailer Operations Division thoroughly reviewed and analyzed a three-month sample consisting of invoices/receipts for March, April, and May 2019. The Retailer

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

Operations Division excluded those invoices/receipts that were dated outside of the review period, were illegible, or were for the purchase of SNAP ineligible items. Many of the unreadable products were attributed to SNAP staple foods as a courtesy to the retailer. The food items in these invoices were totaled by the Retailer Operations Division and a 40 percent markup was applied to arrive at an estimated retail food sales figure for the sample months. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** Assuming that the store also had cash, debit and credit card sales of food, the actual shortfall of food inventory to SNAP redemptions should be even greater.

Over two-thirds of the store's food purchases were for water, snacks and beverages. Staple food and other accessory food purchases accounted for less than one-third of the store's food purchases. This further supports the Retailer Operations Division determination that the irregular transaction patterns in the charge letter could not be explained by store customers making large grocery purchases. It should also be noted that the store's purchase of tobacco products greatly exceeded the dollar value of its food purchases.

However, it should be noted that even if the store had sufficient inventory to support its SNAP redemptions, this would still not explain the irregular transaction patterns cited in the charge letter. It is not unusual for violating stores to conduct largely legitimate SNAP transactions while conducting a smaller number of trafficking transactions with a few trusted households.

CIVIL MONEY PENALTY

The Appellant did not 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. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, 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 ... 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. Stores caught in trafficking

violations consistently display particular, characteristic patterns of transactions, including 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 J 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

March 26, 2020