

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Krossroad Xpress,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0199252**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), there is sufficient evidence to support a finding that the permanent disqualification of Krossroad Xpress (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), 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 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**

By Charge letter dated May 22, 2017, Retailer Operations informed the owners that FNS had compiled evidence that Appellant had violated the SNAP regulations based on its analysis of electronic benefit transfer (EBT) transactions that “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.” The sanction for

trafficking is permanent disqualification. The record supports that Appellant replied to the Charge letter May 26, 2017. Retailer Operations issued a Credit Charge letter on June 9, 2017. One owner provided information in writing or by telephone on June 9, 15, and 20, 2017.

In its Determination letter dated September 28, 2017, Retailer Operations 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 SNAP 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 SNAP regulations. However, the firm was not eligible for the CMP because insufficient evidence was submitted timely to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated October 6, 2017, one owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated October 12, 2017. Hemantkumar (Hemant) Patel provided additional information by letter dated October 30, 2017.

## **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). Parts 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 § 271.2 states in part: "Eligible foods means: 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 § 278.2(f) states: "Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year."

7 CFR § 278.6(a) states that: "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) reads in part: “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.”

### **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 on review were based on an analysis of SNAP electronic benefit transfer (EBT) transaction data during the period of November 2016 through March 2017. This involved two patterns of EBT transaction characteristics which are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated here.

- I totally did not know that I cannot take EBT on food credit. I made an honest mistake.
- I did not have wrong intension. I tried to help some people in the community who really need. I did not sell anything except food, soda, water, etc.
- A USDA letter said it should be disqualification for one year for accepting benefits for payment of credit accounts.
- The letter said I failed to submit sufficient evidence but they did not ask me exactly what documents they need. I just sent however I understand. They did not ask for effective compliance policy and program to prevent violations.
- Here are some steps to prevent future violations and improve my working policy. I stopped food credit. I reviewed SNAP guideline in detail. I trained my employee again. I involved myself in working hours and I keep monitoring non-working hours.

### **ANALYSIS AND FINDINGS**

Retailer Operations presented a case that Appellant trafficked SNAP benefits. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 25 transactions in nine sets of two or more transactions conducted by seven different households (HHs) in unusually short time frames.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant did not stock a profusion of high dollar staple food items such as meat, poultry or seafood. Appellant's eligible stock consisted of limited staple foods and many accessory foods. The store also features many ineligible items. The pricing seen on the cash register receipts provided by an owner confirms that the items were mostly low cost such as, candy for \$2.59, grocery for \$3.99, and 2% grocery for \$1.89. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant had no shopping baskets or hand held baskets, and limited counter space at the checkout area.

**Attachment 2:** This Attachment lists 103 SNAP transactions made by 32 households 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). Appellant also had more flags on each of the Attachments than the comparator convenience stores.

Contentions:

- My store is in the countryside with a walking neighborhood. There are no supermarkets around for 10 miles from this location.
- I maintain my inventory with all sorts of food items (frozen food, packed meat, sandwiches, soda, chips, dairy products, etc.) that people need in this area and offer a reasonable price for it. This is the reason why the store has a steady and loyal customer base, which uses their SNAP benefits cards numerous times in the store daily.
- I have some walking and ride-dependent customers. They try to buy grocery as much as they can do in one visit. Because of that, the store has some high and short time frame transactions. All are transactions made under Food and Nutrition guidelines.
- This is a small community store where I know my customers by name. When they are short of money especially in the winter when they don't have any side work, they request the store to provide them with store food credit. They pay off their food credit the following month with their SNAP card, which is why we have some high transactions.
- Enclosed are my original purchase invoices for the business, to show you how much product is purchased on a monthly basis.

### **Authorized Stores**

Data shows that within a ten mile radius of Appellant there are three authorized supermarkets, one small grocery, a super store and more than 30 other convenience stores. Three of the seven households (HHs) flagged on Attachment 1 conducted SNAP transactions at larger authorized retail food stores the same day they made a transaction at Appellant. 5 U.S.C. § 552 (b)(7)(E). Thus, the data supports that the households flagged on Attachment 1 did access other larger stores to use their SNAP benefits.

### **Vendor Invoices**

Retailer Operations conducted an analysis of Appellant's vendor invoices submitted to support its SNAP redemptions. The record shows that 52 receipts were provided for the months of November 2016 through February 2017. No invoices were submitted for March 2017. Retailer Operations excluded seven invoices 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for being incomplete,

illegible, or altered. Invoices for eligible foods were separated into staple foods, beverages/snack foods, and candy, and a 30% markup was applied. Analysis of the invoices shows that the majority of items purchased by Appellant were in the beverages/snack foods and candy categories. The quantity and value of staple foods acquired was marginal. Retailer Operations concluded that with the exception of the month of November 2016, the invoice documentation did not support that Appellant purchased sufficient eligible foods to support its SNAP redemptions.

## **Credit Accounts**

The owners charged with trafficking claimed that the transactions listed on the Attachments were due to credit accounts. Evidence of the purported credit was requested since Retailer Operations must assess the transactions in the Charge letter to determine if credit more likely than trafficking explains the suspicious data. Retailer Operations sent a Credit Charge letter requesting proof that credit accounts existed at the time the suspicious EBT transactions occurred. Such evidence may include an accounts receivable ledger, which lists the name of each recipient, the dates and amounts of each transaction the retailer claims to be a credit account transaction and a list of what eligible items were sold on the claimed credit.

Credit accounts have long been claimed by retailers as a defense for trafficking in an effort to garner a lesser sanction than permanent disqualification. A credit violation carries a SNAP sanction of a one year disqualification period. If the retailer does not provide adequate proof of credit, the retailer shall be permanently disqualified for trafficking. A one year disqualification for credit cannot be entertained when by a preponderance of evidence it is determined that trafficking has more likely than not occurred. Therefore, to refute charges of trafficking, the owners had to provide adequate proof that credit accounts existed at the time the suspicious transactions occurred.

The owner did not submit a dated credit ledger with recipient names, addresses, SNAP ID information, or items sold as proof that he extended credit to SNAP customers. Hemant Patel provided nine letters from individuals who stated that Appellant gave them food or items on credit. Eight individuals gave telephone numbers. Retailer Operations conducted a search on the following: 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Using the state administrative terminal, Retailer Operations matched 34 transactions on the Attachments to households that claimed Appellant extended them credit. Five households, numbers 1, 4, 6, 8 and 9, could not be matched to state SNAP system data. Household 2 was matched to transaction numbers: 48, 56, 61, 72 and 92. Household 3 was matched to transaction numbers: 37, 58, 60, 71 and 91. Household 5 was matched to transaction numbers: 3, 4, 7, 8, 9, 17, 18, 33, 36, 43, 47, 66, 69, 70, 87, 90, and 102. Household 7 was matched to transaction numbers: 73, 75, 105, 108, 109, 116 and 120. The number of transactions matched was a small percentage of the transactions listed on the Attachments.

Retailer Operations also conducted shopping histories of six households that had transactions listed on the Attachments. One HH conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) its SNAP transactions at Appellant, and its shopping history appears that it could to be the result of credit. The other five households transacted benefits at larger and better stocked stores, including super

stores and supermarkets while at the same time conducting suspicious transactions at Appellant. By preponderance of the evidence, these shopping histories more supported trafficking than credit.

The customer statements which purport to establish that the questioned transactions were for eligible foods acquired on credit accounts cannot be verified. Recipients engaging in trafficking transactions would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were in fact legitimate. Recipients can face consequences from state administrative agencies for participating in trafficking with retailers. Experience shows that SNAP customer declarations and affidavits routinely attest to irregular transactions as being legitimate even when there is other strong evidence of trafficking. Retailer Operations evaluated the evidence of credit and determined that it did not more explain the transactions on the Attachments than did the charged trafficking, for which the appropriate penalty is permanent disqualification.

When the owner signed the certification to become a SNAP retailer, he confirmed his understanding of and agreement to abide by program rules and regulatory provisions. He agreed to accept responsibility on behalf of the firm for violations of the SNAP, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as: accepting SNAP benefits as payment on credit accounts or loans, and trafficking. The certification is clear that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, the owner now claims he allowed credit accounts, a clear violation of the SNAP regulations.

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 available online and is translated 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 the SNAP rules.
- Information that the store owner is 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.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet
- From the "SNAP EBT Dos and Don'ts card (FNS-136 included in the authorization package) "Do not accept SNAP benefits (EBT) as payment on credit accounts."

- From the SNAP Training Guide for Retailers (page 9): “SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of credit accounts. You may not hold customers’ SNAP EBT cards or card account information at your store for future use.”

Thus, the owners were provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could be readily obtained. Nonetheless, they claim they were not aware that credit was a violation of the SNAP regulations. This strains credulity.

### **Cash Register Receipts**

The owner submitted 17 cash register receipts as evidence that only food items were purchased. Retailer Operations found that the cash tapes were not sufficiently itemized to prove that only eligible items were sold. The categories seen on the cash tapes are drinks, candy, grocery, and 2% grocery. Appellant is a gas station convenience store that stocked some staples such as: milk, eggs, juice, pasta, bread and canned goods. It also stocked ineligible items such as: automotive products, tobacco, alcohol, lottery, gasoline, and health and hygiene products. No details as to what were listed as grocery or 2% grocery were advanced. Grocery and 2% grocery could be used for ineligible items, or used when no items were exchanged, and trafficking took place.

### **CIVIL MONEY PENALTY**

To be considered eligible for a CMP, a firm must establish, by substantial evidence its fulfillment of each of the criteria under 7 CFR § 278.6(i). The criteria are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Given these considerations, it is clear that the statute and the regulations allow no flexibility below the level of this stated standard. Appellant produced insufficient evidence that it met all the requirements to qualify for a trafficking CMP in lieu of permanent disqualification.

The owner states that Retailer Operations did not ask him what documents they needed to make an assessment of eligibility for a CMP. The Charge letter refers all retailers to Section 278.6(i) of the regulations which lists the criteria that must be met to be considered for a CMP. The letter further states that if a CMP is requested, the retailer must meet each of the four criteria listed and provide the documentation as specified within ten calendar days of receipt of the Charge letter, and that no extension of time can be granted for making a request for a CMP or for providing the required documentation. Based on this letter, the owners should have consulted the regulations and addressed each of the criteria timely. That the owners state they have allegedly stopped allowing violative credit, reviewed the SNAP guidelines, retained themselves and the employee, and are more involved with work and monitoring at the store, is not sufficient to meet the documentation required by the criteria stated in the regulations.

## **CONCLUSION**

Upon review of record in this matter, it is determined that the evidence more substantially supports a conclusion that the SNAP transaction activity at Appellant was due primarily to SNAP benefit trafficking. 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. Thus, based on the discussion herein, the decision to impose a permanent disqualification from the SNAP against Appellant is sustained.

Appellant did not provide documentation or evidence of fulfillment of the four criteria for consideration for a CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP.

## **RIGHTS AND REMEDIES**

Please see Section 14 of the Food and Nutrition Act of 2008 and Section 279.7 of the regulations (7 CFR § 279.7) with respect to your applicable rights to a judicial review of this determination. 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 the 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 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

November 30, 2017