

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

La Chapi Market LLC,

Appellant,

v.

Case Number: C0204760

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support that the permanent disqualification of La Chapi Market LLC (Appellant) from participation as an authorized food retailer in the Supplemental Nutrition Assistance Program (SNAP), as imposed by the Retailer Operations Division (Retailer Operations), was proper.

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 the 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.

CASE CHRONOLOGY

By Charge letter dated January 25, 2018, Retailer Operations informed the owners that Appellant was in violation of the terms and conditions of the SNAP regulations based on electronic benefit transfer (EBT) transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the type of firm. The sanction for trafficking is permanent disqualification.

One owner, via his representative, replied to the Charge letter February 8, 2018. Retailer Operations issued a credit violation letter dated March 1, 2018. Retailer Operations issued a Determination letter dated May 7, 2018, that informed the owners that Appellant was permanently disqualified from participation in 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 regulations and found the firm was not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP. By letter dated May 11, 2018, the representative of the owner s appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated May 18, 2018. The tax firm provided additional information June 6, 2018.

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: "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: "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) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

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 EBT transaction data during the period of May 2017 through October 2017. The patterns of transaction characteristics indicative of trafficking are:

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

APPELLANT’S CONTENTIONS

In reaching a decision attention has been given to all contentions advanced, including any not specifically referenced.

- The market is known for being neighborhood oriented where all of them know each other. All EBT card holders live under limited household budget.
- In an effort to retain its clientele, the store **was compelled to extend short term credit for about 3 to 4 weeks.**
- Transactions 20 and 21 were credit for parts of April and May. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- Often times there would be one first transaction to settle up old debt and another on credit on the same day.
- 2 or 3 family members can use their card for making quick purchases in the same day.
- I have instructed my client to not extend any credit from now on for this practice is illegal.
- The client apologizes for not knowing that this credit practice was not allowed and is against SNAP rules.
- The store maintains inventory in the area of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per month. This condition allows for transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** weekly per customer.
- Some of the transactions are also due to pay off of prior credit.
- Any store that maintains an inventory **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per month an average sale **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** should not be considered excessively large. These amounts also involve credits plus current purchases.
- For EBT sales showing whole dollar amounts, owner recognizes that those a human errors [sic] not the general sales practice.
- The store managers have limited experience as and it should only be fair that they should be given a first warning to correct the violations.

The owners provided 25 invoices for 2017 and credit ledgers.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment represents the questionable and unusual patterns of SNAP transactions conducted at Appellant during the review period which were indicative of trafficking. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Attachment 1: Listed are 36 transactions in 16 sets of two or more transactions conducted by 11 different households (HHs). Multiple transactions within a short period of time are used to avoid high dollar transactions and are indicative of trafficking.

Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits a credit violation is sanctioned with 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.

The owners provided some handwritten customer tallies in support of credit accounts. Retailer Operations determined that the lists did not provide EBT card numbers, full name, address information or detail what was supposedly acquired on credit. The record includes an assessment of the credit information and it confirms that Retailer Operations did not find the credit lists to be exculpatory of trafficking.

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 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: "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.

When the owner(s) 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 owners now claim they were "compelled" to allow credit accounts, a violation of SNAP regulations and rules, in order to "retain clientele." The claim that they did not know that credit was a violation does not ring true. They wanted to retain customers and undertook the violative use of SNAP to do so.

Retailer Operations determined that while some of the transactions may be explained as credit, the owners failed to provide a preponderance of evidence for the legitimacy of the transactions listed on the Attachments. The information presented as proof of credit was not adequate to convince Retailer Operations that the suspicious transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions.

Attachment 2: Listed are 203 transactions conducted by 87 different households that are at least three times higher than the average purchase amount for this store type in this state.

5 U.S.C. § 552 (b)(7)(E). Data shows that within a one mile radius of Appellant there many authorized super stores, supermarkets, and small, medium and large grocery stores. Therefore, SNAP beneficiaries have shopping options nearby.

Retailer Operations found that the invoices advanced by Appellant were dated from January to October 2017 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Applying a 40% markup brought the total value of invoice documentation 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This was likely a sampling of invoices, but the evidence presented is not sufficient to substantiate the Appellant's claims or justify the transactions listed on the Attachments. The 5 U.S.C. § 552 (b)(6) & (b)(7)(C) inventory claimed is not supported by the documentation advanced. The invoice total is also below the SNAP redemptions that occurred at Appellant during the review timeframe.

This review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether the owner demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact. While the owners contend that the transactions on the Attachments are legitimate, no itemized cash register receipts were advanced as evidence of eligible foods sold at Appellant during the review period. Further, the vendor invoices provided as evidence of Appellant's acquisition and stock of eligible foods to support its SNAP redemptions were not sufficient to cover Appellant's SNAP redemptions. No bank records or federal or state tax records were provided. The owners did not meet the burden to present a preponderance of evidence that the charges were more likely the result of violative credit that from the practice of trafficking.

CIVIL MONEY PENALTY

Contentions:

- The store does have a compliance policy in place and it is well documented. The policy explains how to process EBT and how to handle the electronic payments. This documentation is accessible to all employees.
- Every new employee, especially cash register, will have an initial training process and be educated to learn about this whole process and get familiar with the credit card terminal, the computer network, and the SNAP program regulations.
- The facts present in the documents supplied provide valid information for FNS to reconsider the disqualification.

Retailer Operations correctly determined that Appellant did not qualify for a CMP in lieu of a permanent disqualification. To be considered eligible for a CMP a firm must establish, by substantial evidence, in a timely fashion, its fulfillment of each of the criteria under 7 CFR § 278.6(i) of the regulations. 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. No evidence was advanced by the owners regarding a CMP.

CONCLUSION

Upon review of all of the evidence in this matter it is determined that the evidence by a preponderance supports a conclusion that Appellant's SNAP transaction activity 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 against Appellant is sustained. It is also determined that Retailer Operations properly denied a CMP.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owner resides or is 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

July 25, 2018