

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

Last Stop,

Appellant,

v.

Case Number: C0210487

Retailer Operations Division,

Respondent.

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 Last Stop (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 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 the FNS.

CASE CHRONOLOGY

By Charge letter dated August 1, 2018, Retailer Operations informed the owner that USDA had compiled evidence that Appellant had violated the SNAP. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was charged with

trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter by telephone on August 7, 2018. Retailer Operations issued a credit violation letter on August 8, 2018, to which a reply was request within ten calendar days of receipt. No reply was received by the due date.

Retailer Operations issued a Determination letter dated August 30, 2018. This letter informed the owner that Appellant was permanently disqualified as a SNAP retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible for a CMP because insufficient evidence was submitted to demonstrate that the owners had established and implemented an effective SNAP compliance policy and program to prevent violations.

By undated letter with no visible postmark, the owner requested review of the determination. The request for appeal was granted by letter dated September 24, 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 actions 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). Sections 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 § 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."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

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(b)(2)(ii) states: “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 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).”

7 CFR § 278.6(i) states: “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.”

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 transaction data during the period of January 2018 through June 2018. This involved three patterns of transaction characteristics that are indicative of trafficking:

1. An unusual number of transactions ending in a same cents value.
2. Multiple transactions made within a set time period.
3. Excessively large transactions made from recipient accounts.

APPELLANT’S CONTENTIONS

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

- The owner stated that she allowed credit accounts which would explain some of the transactions.
- She stated that when they come in to pay the credit she would often break it into smaller amounts so she didn’t have large transactions.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable 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 113 transactions with 00 end cent values, which represent 22% of the total transactions at Appellant in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more during the review months. The four highest priced items recorded on the onsite store visit report all ended in .x9 cent end values. When there are a disproportionate number of transactions that end in a same cent value it appears that these amounts are contrived and therefore, in the absence of any compelling evidence to the contrary, are indicative of trafficking.

The store visit report documents that Appellant sold ineligible items including: tobacco products, paper goods and cleaning products. The photos also show that Appellant appears to be a convenience store with accessory foods including snacks, beverages, and condiments.

The owner provided no price list of eligible foods. Appellant did not provide evidence by means of vendor invoices to support the stock of SNAP-eligible food at Appellant. No credit information was provided to support the claim that some on the transactions may have been the result of violative credit. Retailer Operations determined that the suspicious transactions listed on the Attachment were more likely than not the result of trafficking as charged.

Attachment 2: Listed are 339 transactions in 95 sets of two or more transactions. Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking. The record supports that there are at least 60 authorized stores within a one mile radius of Appellant. The data shows that there is at least one super store just .8 miles from Appellant.

The owner claimed in a telephone conversation with Retailer Operations that credit was advanced to beneficiaries, a violation of the SNAP regulations. No evidence of credit by means of household statements or credit logs were advanced to support that credit was advanced to recipients for eligible food items.

Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits documented credit violations is sanctioned with a one year disqualification period and may incur fiscal claims. 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.

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 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 owner was provided multiple and redundant resources through which a thorough knowledge of Program rules and requirements could be readily obtained. By signing the certification to become a SNAP retailer, the owner confirmed understanding of and agreement to abide by the rules and regulatory provisions. The application certification requires owners to agree 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.

Retailer Operations determined that the owner failed to provide sufficient evidence for the legitimacy of the transactions listed on the Attachment. Given the lack of evidence regarding purported credit, Retailer Operations was not convinced that the suspicious transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions.

Attachment 3: Listed are 270 transactions that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The record supports that Appellant's SNAP average transaction amount for the review months was 77% higher than the same store type in the state and 79% higher than in Lehigh County. Appellant's SNAP dollar volume was 50% higher than the state average SNAP dollar volume for the same store type and 53% higher than the county average. This is irregular.

As noted, no vendor invoices for the acquisition of eligible foods were advanced for review. No business banking records were provided. No federal business tax filings or state business tax filings were provided. No credit logs, recipient statements or related supporting documentation was provided that credit was advanced in violation of the regulations.

Government analyses of stores caught trafficking during on-site investigations has found that transactions involving trafficking consistently display particular characteristics or patterns.

These patterns include in part those cited in the letter of charges. Computer transaction data in addition to store visit observations and an analysis of household shopping behavior were used in rendering a finding that violations indicative of trafficking were occurring at Appellant. The regulations allow for disqualification of a retail food store based on a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system.

This review encompasses and documents the examination of the evidence in this case to determine whether Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. While some of the hundreds of transactions listed on the Attachments may have been the result of violative credit, no credit documentation was presented. In appeal of this matter, 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. Appellant has not met this burden. The preponderance of the evidence supports that the transactions flagged were more likely the result of trafficking.

CIVIL MONEY PENALTY

7 CFR § 278.6(i) specifies the criteria for a store's eligibility for a civil money penalty 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 owner did not submit any documentation to support a trafficking CMP. Accordingly, Retailer Operations correctly determined that Appellant did not qualify for a trafficking civil money penalty in lieu of a permanent disqualification.

CONCLUSION

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

The contentions offered for the transaction patterns were not persuasive by a preponderance of the evidence. No recipient affidavits or credit documentation was advanced to support the claim of credit. No federal or state sale tax submissions were advanced to rebut the trafficking charge. No business banking records were provided. No itemized cash register tapes or automated date-stamped sale receipts were advanced to support the transactions at Appellant were legitimate. No vendor invoices of acquired eligible food stock to support the high volume of SNAP redemptions were provided.

The owner admitted to allowing violative credit, a sanctionable offense, but no evidence of credit including a credit log with dates, names, SNAP ID information, and items sold on credit was provided. As such, the claim of credit was not supported with evidence and not exculpatory as to

trafficking. Based on the analysis of the transaction data in the Attachments, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transaction patterns on the Attachments evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 and to of the Regulations at 7 CFR § 279.7 with respect to applicable rights to 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

October 31, 2018