

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

Laurelton Mini Mart,

Appellant,

v.

Case Number: C0204040

Retailer Operations Division,

Respondent.

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 Laurelton Mini 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 in its administration of the SNAP, when it imposed a permanent disqualification against Laurelton Mini 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 December 7, 2017, 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 May 2017 through October 2017. 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 Appellant did not reply to the charge letter.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated December 19, 2017. The determination 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 Section 278.6(i) of the SNAP regulations. 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.

In a letter postmarked January 2, 2018, the Appellant, through counsel, 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, might 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 states, in part:

Trafficking means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food

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 food 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....** [Emphasis added.]

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).** [Emphasis added.]

(iii) **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** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from May 2017 through October 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 3:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 168 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- There is insufficient evidence to make a determination to disqualify Laurelton Mini Mart based on the nature and scope of the violations allegedly committed by personnel of the firm.
- The administrative review should be based on any prior action taken by FNS to warn the firm about the possibilities that violations were occurring.
- There is a lack of evidence showing the firm's intent to violate the regulations pursuant to 7 CFR 278.6.
- Any failure to timely address the charge letter should be excused due to the store owner's limited education and the owner's good faith act to serve the

needs of a financially depressed minority community. The owner is prepared to present evidence rebutting the three (3) trafficking patterns which include the nature of the items sold constituting products of specific brand and quality, catering to customers of certain ethnic and cultural heritages from the Caribbean basin.

- The determination is harsh and devastating financially and could put the store out of business and adversely affect the under privileged community that the business serves.
- Alternatively, a CMP should be considered but in a lesser amount than the very substantial figure contemplated.

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 and Compliance History

The Food & Nutrition Service (FNS) authorized Laurelton Mini Mart for the SNAP on January 6, 2016. The owner signed the SNAP application for the store on November 30, 2016 and acknowledged that the owner 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 for ineligible non-food items.

During the review period of May 2017 through October 2017, the Retailer Operations Division classified the store as a small grocery store. On August 1, 2017, the Retailer Operations Division issued a warning letter to the store as personnel had exchanged condoms for SNAP benefits during an undercover compliance visit.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 15, 2017 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:

- Laurelton Mini Mart is approximately 1,800 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register for groceries and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- The aisles were narrow and the lighting in the store was poor.
- Store personnel confirmed that there was no food stored outside of public view in a storage area and that no food was stored offsite.
- Food items generally had prices ending in x9 cents.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Store personnel confirmed that the store did not round prices up or down at the checkout.
- There were no large bulk foods, expensive international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or large boxes of fresh fruit and vegetables for sale.
- The checkout area consisted of a window surrounded by shelving with products for sale. At the window, there was a small countertop no more than two (2) feet by three (3) feet in size. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods with only a limited amount of deli meats and a limited amount of fresh fruits and vegetables. The store also sold snack foods and other accessory food items such as coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol, lottery tickets, mobile phone accessories, health and beauty products, paper goods, and cleaning products. The store had a kitchen where SNAP ineligible prepared ready-to-eat sandwiches were made to order. The store also offered a money transfer service.

Store personnel confirmed that the most expensive items sold by the store were 24 ounces of organic honey at \$9.99; a pound bag of pastrami or roast beef lunchmeat at \$9.99; 34 ounces of Goya olive oil at \$9.99; and 12 ounces of ackee at \$7.99. However, the store did not appear to have a large quantity of these items in stock.

Given the available inventory 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.

Same Cent Transactions

During the review period, Laurelton Mini Mart conducted 1,116 SNAP transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant did not offer an explanation for this irregular transaction pattern. The Appellant's counsel stated that the owner was prepared to present evidence rebutting the three (3) trafficking patterns which include the nature of the items sold constituting products of specific brand and quality, catering to customers of certain ethnic and cultural heritages from the Caribbean basin. However, although the Appellant's counsel requested and was granted an extension of time to February 22, 2018 to provide this information, no further response was received from the Appellant.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store visit report documented that most items in the store had price amounts ending in nine (9) cents. Store personnel also stated during the store visit that the firm did not round prices up or round prices down to the nearest dollar. Based on the store visit report, the Appellant's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short 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 a small grocery store's stock and facilities and are thus indicative of trafficking.

The Appellant did not offer an explanation for this irregular transaction pattern. The Appellant's counsel stated that the owner was prepared to present evidence rebutting the three (3) trafficking patterns which include the nature of the items sold constituting products of specific brand and quality, catering to customers of certain ethnic and cultural heritages from the Caribbean basin. However, although the Appellant's counsel requested and was granted an extension of time to February 22,

2018 to provide this information, no further response was received from the Appellant.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that a small grocery store would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or shopping baskets for transporting food within the store. 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 limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking.

The Appellant did not offer an explanation for this irregular transaction pattern. The Appellant's counsel stated that the owner was prepared to present evidence rebutting the three (3) trafficking patterns which include the nature of the items sold constituting products of specific brand and quality, catering to customers of certain ethnic and cultural heritages from the Caribbean basin. However, although the Appellant's counsel requested and was granted an extension of time to February 22, 2018 to provide this information, no further response was received from the Appellant.

Charge Letter Attachment 3 cites 168 SNAP transactions

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

The substantial number of high dollar purchases atypical of a SNAP authorized small grocery store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store

would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

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 that there are 46 surrounding SNAP authorized stores within a one-mile radius of Laurelton Mini Mart including twelve (12) small grocery stores, three (3) medium grocery stores, and four (4) supermarkets. The Retailer Operations Division also determined that Laurelton Mini Mart store does not appear to stock any expensive food items or any international food items not available at other retailers in the area. A government report 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 small grocery store with a limited selection of staple foods like Laurelton Mini Mart.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Laurelton Mini Mart compared to their shopping patterns at other SNAP authorized stores.

All of these households had access to, and shopped at supermarkets and superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Laurelton Mini Mart on the same day or within a few days of shopping at supermarkets and superstores. It is highly unlikely that a small grocery store with 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 and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

Trafficking Case Based on Irregular Transaction Patterns

FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR § 278.6(a) which 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**” [Emphasis added.]

Basis for Determination

The Appellant contends that Retailer Operations Division did not properly apply the three factors under 7 CFR § 278.6(d) before imposing a permanent disqualification on the firm. 7 CFR § 278.6(d) states, in part, that in making a disqualification determination FNS shall consider:

- (1) The nature and scope of the violations committed by personnel of the firm,
- (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
- (3) Any other evidence that shows the firm's intent to violate the regulations.

As noted above, a review of the entire case record indicates by a preponderance of the evidence that the decision to permanently disqualify Laurelton Mini Mart is based on sufficient evidence and was not arbitrary and capricious. With regard to the nature and scope of the violations, trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification. Therefore, the Retailer Operations Division properly determined that the nature and scope of the violations warrant a permanent disqualification.

Regarding prior warnings, the regulation simply requires FNS to **consider** any prior warnings when determining a sanction. The Appellant store was issued a warning letter dated August 1, 2017 regarding selling ineligible non-food items in exchange for SNAP benefits. However, the SNAP regulations do not require the Retailer Operations Division to give prior warnings before issuing a charge letter

for trafficking. SNAP regulations at 7 CFR § 278.6(e)(7) states that FNS will “send the firm a warning letter if violations are too limited to warrant a disqualification.” Trafficking transactions are not considered to be “violations that are too limited to warrant a disqualification.”

Lastly, the definition of trafficking contained in the SNAP regulations at 7 CFR § 271.2 does not require an element of intent on the part of the violator.

Hardship to SNAP Customers

The Appellant claims that the local SNAP community will suffer a hardship if Laurelton Mini Mart is permanently disqualified from the SNAP. Regarding this contention, there is no provision in SNAP law or regulations that would waive or reduce a permanent disqualification for trafficking due to a purported hardship to SNAP customers. Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a **less than permanent** disqualification. However, the regulations at 7 CFR § 278.6(f)(1) clearly state that “a civil money penalty for hardship to [SNAP] households **may not be imposed** in lieu of a permanent disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted that there are 46 SNAP authorized stores located within a one-mile radius of the Appellant store including four (4) supermarkets. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of Laurelton Mini Mart.

Hardship to Firm

The Appellant states that the determination is harsh and devastating financially and could put the store out of business. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow store ownership to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those

retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

In the alternative, the Appellant, through counsel, requests a CMP in lieu of a permanent disqualification. However, the Appellant did not timely 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.

SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states 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** specified in § 278.6(b)(1), 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. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, 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 Laurelton Mini 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 16, 2018