

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

L M Deli Grocery,)	
Appellant,)	
)	
v.)	Case Number: C0187333
)	
Retailer Operations Division,)	
<u>Respondent.</u>)	

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that L M Deli Grocery (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially 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 February 9, 2016, Retailer Operations informed the owner that Appellant was in violation of the terms and conditions of the SNAP regulations based on electronic benefit transactions (EBT) that “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.” The letter of charges states, that “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” Appellant replied to the Charge letter by facsimile received February 22, 2016.

Retailer Operations issued a credit letter dated February 23, 2016, informing Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulations at Section 278.2(f). Retailer Operations issued a Determination letter dated September 30, 2016. This letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations.

Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Appellant was not eligible for the CMP 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 per the regulations cited.

By letter dated October 11, 2016, the owner appealed Retailer Operations' determination and requested administrative review of this action. The appeal was granted by letter dated October 17, 2016.

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). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

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."

7 CFR § 271.2 states in part that, "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 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...*”
(*emphasis added*)

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 USC 2018 (b)(7)(e). As part of the retailer’s reply to the Charge letter, the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred. It is imperative that the retailer provide evidence to refute charges of trafficking. Such evidence may include an accounts receivable ledger, which lists the name of each recipient as well as the dates and amounts of each transaction the retailer claims to be a credit account transaction. The determining office shall compare the credit information provided by the retailer against the transactions outlined in the letter of charges, and the recipient personal identifying information available from the State EBT administrative terminals. If the retailer does not provide adequate proof, the retailer shall be permanently disqualified for trafficking.

APPELLANT’S CONTENTIONS

The following may represent a brief summary of the contentions in this matter however, in reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated or reference herein. The contentions are:

- We have allowed a very select few families to have their basic food needs filled on credit and they repay the business back when they receive their benefits.
- Many of the larger transactions noted in the report are in actuality repayments of not one large transactions but are the accumulation of many smaller transactions added together.
- We were not aware that accepting EBT benefits as payment for store credit was against the rules and regulations and have discontinued this form of payment.
- We strive to maintain competitive pricing.
- Many neighboring residents satisfy their needs at our store and many of them make large purchase with benefits.
- The transactions detailed in your report show a level of normalcy.
- We are a rule abiding business and have never had a problem with the observance of the rules and regulations of the SNAP and under no circumstances would we violate them.
- We request a CMP in lieu of a permanent disqualification.

The owner provided: purchase receipts from suppliers, customer letters to confirm they receive in-store credit, photos of the store, and bank statements.

SUMMARY OF 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 June 2015 through November 2015. This involved two patterns of EBT transaction characteristics which are indicative of trafficking:

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

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual 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: Multiple SNAP purchase transactions were made from individual benefit accounts in unusually short time frames. [7 USC 2018 (b)(7)(e)].

The owner contends that she allowed credit to some families. Extending store credit is against SNAP rules and regulations. When the owner signed the certification to become a SNAP retailer, the owner confirmed her understanding of and agreement to abide by program rules and regulatory provisions. She 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 admits that she allowed credit accounts, a clear violation of SNAP regulations and rules.

At the time of authorization each retailer is provided a training guide that clearly explains that credit and trafficking is 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 owner of the store 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 to retailers when authorized by FNS 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 owner was provided multiple and redundant resources through which a thorough knowledge of program rules and regulations could be readily obtained. Nonetheless, the owner claims she allowed violative credit. 7 USC 2018 (b)(7)(e).

The owner also stated that one factor in one account having multiple transactions made within a short time frame is that there are families that share their SNAP benefits with other family members. For example, one family member may receive their benefits on the 3rd of the month, while another recipient will receive their benefits on the 11th. A customer will make their personal purchase, and then charge items for another family member separately, to obtain a separate invoice, which makes it easier when the family member pays them back.

7 USC 2018 (b)(7)(e). It did not seem credible that a household would return to the store an hour or hours after it shopped for its household to shop again for family members. None of the four customer statements advanced stated that the households purchased food for family members.

The owner also avers that when the store is busy, purchases are added up with a calculator before they are processed through the EBT terminal, so that transactions do not take a lot of time to be processed. It is noted that the onsite store review report did state that Appellant had a calculator. 7 USC 2018 (b)(7)(e).

The contractor photos and store visit report of December 19, 2015, do not evidence a store that is unique or particularly well stocked in staple foods. The stock includes accessory foods and ineligible items such as: tobacco, alcohol, lottery tickets, hot foods, pet supplies, and paper and cleaning products. Retailer Operations' review of client shopping data for the review period shows that clients shopping at Appellant are also shopping at other area grocery stores, as well as super stores, supermarkets, and large grocery stores that generally offer a larger quantity and variety of eligible food items at competitive prices. 7 USC 2018 (b)(7)(e).

The data shows that within a one mile radius of Appellant there more than 90 authorized stores of varying types including: convenience stores, other small grocery stores, medium groceries, supermarkets and super stores. 7 USC 2018 (b)(7)(e).

No SNAP recipient affidavits were provided attesting to bulk purchases. No itemized cash register tapes for items purchased were advanced. The photos seen on the facsimile provided by Appellant are not clear or useful. The evidence of eligible food stock as advanced by means of invoice documentation was insufficient to cover Appellant's SNAP redemptions. [7 USC 2018 (b)(7)(e)]. Receipts and invoices not able to be used by Retailer Operations included a Summary Report from an unknown supplier with no store name, and a Jetro Purchase History Report for 1/12/16 and 2/11/16 with no items listed and not for the applicable review months.

The credit statements are not sufficiently detailed with dates and proof of items sold to legitimize that only eligible items were purchased. Retailer Operations determined [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] conducted transactions at Appellant during the review months, but the information provided on the HH's statement did not list when credit was granted or repaid. Also, the retailer did not provide a credit ledger for analysis. Retailer Operations determined [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] conducted transactions at Appellant during the review months. The HH stated it received credit for \$109.53. Retailer Operations confirmed that there is no transaction listed for this amount during the review period. The statement did not list when credit was granted or repaid. Since Appellant did not provide a credit ledger for analysis, Retailer Operations could not determine if credit was granted.

Retailer Operations determined that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] did not conduct any transactions at Appellant during the months in question. Retailer Operations identified that [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] did conduct transactions at Appellant, but insufficient proof was advanced as to what credit transactions were conducted, as listed on the Attachments, to refute charges of trafficking. Therefore, upon review, the explanations advanced as to the legitimacy of the transactions listed on this Attachment are not supported by a preponderance of evidence.

Attachment 2: Excessively large purchase transactions were made from recipient accounts. [7 USC 2018 (b)(7)(e)].

Appellant contends:

- We offer a large variety of food products and a full range of groceries, deli meats and produce that a customer will need to sustain their family. It would be easy for a customer to come into this store and expend their monthly benefits. Per your report, you state that "there are excessively large transaction made from recipient accounts" when making food purchases. A 20 lb. bag of rice, some chicken, some pork chops, milk, eggs and cold cuts will easily add up to that.
- A major factor in excessively large transactions is that food prices are higher than ever and only a few items are needed to accrue a large bill. Egg and milk prices have gone up exponentially. Another is cold cuts, we only sell Boars head brand, and they are priced at \$5.99 to \$8.99 per pound, rice 20 lb. is \$10.99, gallon of milk for \$3.49 and over, eggs \$3.79, just to name some of them. We make extensive daily and weekly purchases to maintain our foothold in the neighborhood, as you can see per invoices enclosed.

- In addition, due to the availability of in-store credit that we give to several of our customers, most of the large transactions that are listed in your report correspond to the repayment of these credit transactions given to our customers. These are the accumulation of several smaller transactions given throughout the month that they repay once they receive their monthly benefits. When they repay us, they will then make their monthly purchases, with many of them spending their benefits as soon as they are received. We have enclosed several letters from our customers, confirming the credit given to them.
- Due to many groceries losing their ability to process EBT, our processing of these transactions has risen significantly.
- I would never jeopardize our standing for a minimal profit. My business would not survive disqualification from SNAP and may be forced to close.

According to the store visit report, Appellant does not have any shopping carts or baskets for customers to use which makes it difficult to explain how a HH could transport high dollar amounts of food items to the register for purchase. The single register is behind a plastic barricade window surrounded by product displays leaving little to no space to place the many items of food that would need to be assembled to achieve dollar totals in the dollar range seen in this Attachment.

Retailer Operations noted that on the day of the store visit there were no signs posted that deli meats were sold by pound. FNS contractor photos showed only one 20 lb. bag of rice on the shelf. The record supports that there were no itemized vendor invoices submitted by the owner, only a receipt from Jetro, bank statements, copies of store photos that were not legible, copies of statements from four SNAP clients, an Item Summary Report from an unknown supplier, and a Jetro Purchase history report with no items listed. 7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e).

The owner contends that a SNAP disqualification will have a negative financial impact on Appellant. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. 7 USC 2018 (b)(7)(e). To allow the owner to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Furthermore, 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, the 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.

Based on a preponderance of the evidence Appellant does not appear to have eligible stock available to support the high dollar transactions listed on this Attachment. The FNS photographs do not show signage promoting bulk item sales. No evidence was provided that SNAP recipients are making bulk purchases at this store. No itemized cash register tapes of purchases were provided. No federal business tax submissions or state sales tax forms were

furnished as evidence that this store is operating legitimately. Other than the few prices cited in the contentions, no price list of eligible items stocked at Appellant was provided. 7 USC 2018 (b)(7)(e). This confirms that Appellant is not the only store in the area to provide eligible food items.

7 USC 2018 (b)(7)(e). Without substantial documentation that credit was extended to SNAP customers it is impossible to make comparisons against any specific transactions outlined in the letter of charges or substantiate that such transactions were indeed the result of credit account repayments. 7 USC 2018 (b)(7)(e).

The owner alleges that a reason for the large transactions is due to credit being extended to customers. The owner provided four credit letters from SNAP HHs, one of which was not matched to any transactions for the review months. The three remaining statements were inadequate, given that Appellant did not advance a credit ledger, lacking information such as HH addresses, items purchased on credit, and the dates of credit extended and then repaid. Insufficient evidence as proof of credit to SNAP HHs was advanced to substantiate Appellant's claim that the transactions on the Attachments were more likely than not due to violative credit accounts. Therefore, based on all the evidence available, Retailer Operations determined that Appellant was trafficking and took the action to permanently disqualify Appellant.

CIVIL MONEY PENALTY

The owner did not provide CMP documentation as required and clearly stated in the Charge letter. 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 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. Accordingly, Retailer Operations determined that Appellant did not qualify for a CMP in lieu of a permanent disqualification.

CONCLUSION

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided a preponderance of evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Upon review of all of the evidence in this matter, it is determined that the preponderance of the evidence supports a conclusion that it is more likely true than not true that program violations did occur at Appellant as charged by Retailer Operations. Thus, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

Appellant did not provide documentation for consideration for a CMP in lieu of permanent

disqualification. Thus, Retailer Operations properly denied a CMP according to the terms of Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Your 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

MADELINE VIENS
ADMINISTRATIVE REVIEW OFFICER

November 16, 2016
DATE