

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

**Logan Convenience Store,**

**Appellant,**

**v.**

**Case Number: C0202419**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Logan Convenience Store (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA, Food and Nutrition Service (FNS) that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store 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 October 11, 2017, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on 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 shows that Appellant replied to the Charge letter October 20, 2017.

Retailer Operations issued a Determination letter dated January 2, 2018. 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 SNAP regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to the terms of Section 278.6(i) of the regulations. Appellant was not eligible for the CMP because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated January 16, 2018, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated January 26, 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). 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) reads: "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 were based on an analysis of SNAP EBT transaction data during the period of December 2016 through June 2017. The following patterns of EBT transaction characteristics are indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Excessively large purchase transactions were made from recipient accounts.

## **APPELLANT'S CONTENTIONS**

The following may represent a summary of the contentions in this matter however, in reaching a decision, attention has been given to all contentions presented, including any not specifically referenced.

- The disqualification was erroneous since the store did not traffic.
- Any noncompliance with regulations was unintentional and the store has instituted protocols to ensure noncompliance will not recur.
- The remedial actions taken by the store would qualify it for a CMP.
- We do not automatically make inquiries concerning the purchases but simply sell the items and do not question our customers about who the items are being purchased for.
- EBT accounts for approximately six to ten percent of our business.
- Our cashiers are trained and our training material was updated in August 2017. Each cashier is required to review the video put out by USDA.
- We installed a new cash register which allows us to track EBT items.

## **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:** Listed are 715 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). When there are a disproportionate number of transactions that end in same cents values it appears that these transaction amounts are contrived and in the absence of any compelling evidence to the contrary, the transactions are indicative of trafficking. Contentions:

- The reason that there were transactions ending in the same cents value is because we list many items in our store at an even dollar amount for the efficiency of the sale and if it is closer to the even number we give the benefit to the customer with no tax.
- Our Exhibit C notes that we starred the items that are duplicates ending in an even number and we have several food items in our store that sell for that amount.
- We purchased a new cash register in January 2017 and it records EBT transactions.
- One of the items is milk formula for babies that sells for \$30.00.
- We have found that it is best to mark items ending in an even number because of the efficiency of the sale. This is how our businesses run whether it is a cash, EBT or credit card transaction.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) The owner provided no price list of the eligible foods at Appellant. Retailer Operations' review of the store visit photos confirms the price for a bottle of water as \$.99, soft drinks were priced at \$1.69 and \$1.79, bags of chips were \$1.69, 12 packs of soft drinks were seen at \$5.59, and Similac was \$16.99. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Further, no evidence such as recipient statements was advanced to support the contention that totals were rounded off. The store visit report also confirms that when asked, the responding store staff stated that prices were not rounded up or down at checkout. No change is provided with SNAP transactions, therefore there is no incentive to price items in a certain way since there is no inconvenience of providing change.

The owner provided 68 store sales receipts for May 2017 and June 2017. Retailer Operations analyzed 61 receipts, 24 in May and 37 in June, three receipts were incomplete and four were duplicates. The receipts show the words: Snack, Deposit In, NT Beverage, Candy, BD, Chips, Non tax and Discount and as such are not specific as to what item was purportedly purchased. Retailer Operations noted that Snack was used 124 times, Pop was used 79 times, Chips was used 76 times, Deposit In was used 39 times, NT Beverage was used 77 times, BD was used 20 times, Non Tax was used 44 times, Discount was used four times and Candy was used six times. Retailer Operations concluded these receipts are not sufficient to support that the transactions were for eligible foods. No vendor invoices of eligible stock purchased by Appellant for sale were provided. The owner has not by a preponderance of the evidence addressed this Attachment as reflective of legitimate SNAP transactions.

**Attachment 2:** Listed are 435 transactions for amounts that exceed the average transaction amount for the same store type in the same state 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The owner contends:

- 193 excessively large purchase transactions made from recipient accounts are duplicates.
- Our cashier made a mistake on a transaction on June 16, 2017. We are enclosing a copy of the transaction for 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Counsel stated that one of the items sold at Appellant is formula for babies for \$30.00. Regarding this contention, the store visit report lists the three most expensive eligible food items at the store as Similac for \$16.99, pop priced at \$5.59 and canned ham priced at \$5.00. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

One refund does not negate the many high dollar transactions listed on the Attachment. Further, the receipt has a handwritten note that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was refunded. Retailer Operations determined that this documentation contradicts the statement that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was refunded to the recipient and did not find this refund receipt to be credible evidence.

By design the Attachments list suspicious transactions; therefore, that the same transactions are listed on more than one Attachment is intentional. The FNS photos do not show that the large dollar transactions are supported by the store's eligible food inventory. Based on the information gathered during this visit, the firm did not stock fresh meat or any fresh produce. The staple food stock included canned and packaged goods, bread, beans, pasta, and milk. The store does not have shopping carts or baskets available for recipients to move large amounts of eligible food items to the checkout counter. Appellant does not appear to stock expensive food items or specialty or ethnic food items not available at authorized stores in the area. Ineligible items include: tobacco products, alcohol, hats, and clothing.

Retailer Operations determined that multiple households' shopping histories support that these recipients were shopping at other larger stores. More than 200 households flagged in the Attachments made a SNAP transaction at a larger store on the same day they conducted a transaction at Appellant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). This is irregular.

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. An Appellant that seeks to set aside an agency sanction has the burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same. While some households may have conducted legitimate transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided no vendor invoices of eligible items acquired to support Appellant's SNAP redemptions. No pricing sheet was advanced. No customer statements were provided to support that the transactions listed were for eligible foods. No business tax returns or state tax filings were advanced, and no banking statements were provided. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious in the Attachments provided with the Charge letter. This burden has not been met.

## **CIVIL MONEY PENALTY**

Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The owner did not submit documentation to prove that Appellant met the trafficking CMP requirements as stipulated in the regulations at 7 CFR Section 278.6(i). These regulations specify the criteria for a firm's eligibility for a CMP 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. 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 SNAP 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. Based on empirical data and in the absence of a preponderance of compelling evidence of the legitimacy of the transactions on the Attachments cited, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, 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 Section 279.7 of the regulations (7 CFR § 279.7) with respect to 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 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

March 13, 2018