

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

**M & J Food Mart,**

**Appellant,**

**v.**

**Office of Retailer Operations  
and Compliance,**

**Respondent.**

**Case Number: C0223662**

**FINAL AGENCY DECISION**

The record supports that M & J Food Mart (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Office of Retailer Operations and Compliance (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 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 Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

By Charge letter dated December 9, 2019, Retailer Operations informed the owners that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

One owner responded to the Charge letter by telephone on December 12, 2019. Retailer Operations issued a Credit Charge letter dated December 12, 2019. The record shows no retailer reply to this letter within the given timeframe.

Retailer Operations issued a Determination letter dated January 3, 2020. This letter informed Appellant that it was permanently disqualified as a 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 civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter postmarked January 10, 2020, one owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated January 28, 2020. The owner provided additional information postmarked February 12, 2020.

### **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 credible, 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 were based on an analysis of SNAP transaction data during the period of July 2019 through October 2019. The patterns of transaction characteristics indicative of trafficking are:

**Attachment 1:** Listed are 102 transactions in 34 sets that were made from the accounts of individual SNAP households within a set time period.

**Attachment 2:** Listed are 64 transactions in 18 data sets where the bulk of the SNAP households’ remaining benefits were depleted within short time frames.

**Attachment 3:** Listed are 165 EBT transactions that are large based on the observed store characteristics and recorded food stock.

### APPELLANT’S CONTENTIONS

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

- We got ripped off by the previous owner and we are having a hard time making ends meet, especially without EBT.
- I have my house for collateral. We are hardly taking anything home and we are using our savings that we have very little of.
- I did not know I’m not supposed to give them credit until I talk to one of the USDA person she told me I’m not supposed to lot of customer bag[sic] for credit because they used all their EBT so give them credit and they buy food and milk soda and chips etc., and I gave them credit when they get their EBT loaded they pay their credit with the EBT.

- I'll also attach photos as proof but usually I write it down and after they pay their credit I usually throw them away. That's why I don't have a lot of proof but I kept a few of them.
- I will never give them credit anymore. We need our EBT, please have mercy on us.

The responding owner presented a copy of a Northwest Bank statement, a store transaction batch receipt, and some handwritten credit ledgers.

## **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.

The regulations at 7 CFR § 278.6(a) state 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, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system. The owner(s) has the burden of providing credible, 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. In this matter, the responding owner has not provided a preponderance of evidence to support that the transactions listed in the Attachment patterns were for eligible foods.

During a telephone conversation with Retailer Operations, the owner claimed 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 after the Credit Charge letter was issued. 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.

Retailer Operations was unable to substantiate the responding owner's claim of credit given to SNAP customers since the advanced credit tabs provided for review did not have any dates or sufficient information to know if the tabs were for SNAP beneficiaries. The undated tabs are not itemized to show what products were allegedly purchased, and the names provided are not full names with addresses, and SNAP identification information. As such, Retailer Operations determined that Appellant failed to provide sufficient evidence that the transactions listed on the Attachments were legitimate rather than the result of trafficking.

Retailer Operations found that the summary merchant processing statement information did not explain the transactions listed in the Attachments. Retailer Operations determined that the evidence regarding purported violative credit during the review period was not adequate to convince it that the suspicious transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions.

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 owners were 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(s) confirmed understanding of and agreement to abide by the rules and regulatory provisions. 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.

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 transactions listed on the Attachments may have been the result of violative credit, credit documentation specific to the review period was not presented. The few tabs advanced were missing information such as full names, addresses, dates, items acquired, and SNAP identification information. Thus, the

preponderance of the evidence supports that the Attachment patterns were more likely the result of trafficking. In an 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.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed at the cited regulation are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The responding owner did not submit substantive documentation to support a trafficking civil money penalty in lieu of permanent disqualification as required by the regulations. Given the lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations, the owner did not meet the criteria for a CMP. Retailer Operations properly denied it.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and household shopping analyses that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

The owner admitted to allowing violative credit, a sanctionable offense, but insufficient evidence of credit accounts including: a credit log with dates, full names, SNAP ID information, and items sold on credit, was provided. As such, the claim of credit was not supported by a preponderance of evidence, and not exculpatory as to trafficking. Based on the entirety of the record, 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 denial of a trafficking CMP was also proper. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. This decision is effective 30 days from the date of receipt by Appellant.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this Decision. If 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 owners 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, 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 11, 2020