

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

Market Place,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0203113

FINAL AGENCY DECISION

The record indicates that Market Place (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized food retailer in the Program, 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 November 14, 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 November 18, 2017.

Retailer Operations concluded that trafficking had occurred as charged, and issued a Determination letter dated December 5, 2017. 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 trafficking 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 to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations.

By letter dated December 13, 2017, the owner appealed Retailer Operations' determination. The appeal was granted by letter dated December 22, 2017. The owner provided additional information by letter dated January 11, 2018 which was shared with Retailer Operations.

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) 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 in part: "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 EBT transaction data during the period of June 2017 through September 2017. This involved two patterns of EBT transaction characteristics which are indicative of trafficking:

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

APPELLANT’S CONTENTIONS AND EVIDENCE

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.

- My business increased due to a new apartment complex in walking distance from my store.
- Some customers are coming three, four times a day. This apartment started business from last six months and business has been increased.
- I opened a new store, my total intention is from the last five six months in a new store. I hired an employee to manage this store and relied on him.
- I have run this store many years.
- Please do not take any action against me otherwise I could not continue my business.

- I am submitting new corporation documents in the name of my son. Due to this new store all my concentration was in this business.
- The address of the new apartment in The Pines on Vineville due to which the walk-in customers increased.

The owner provided three pages regarding the incorporation of a Georgia LLC.

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 148 transactions in 43 sets of two or more transactions, conducted by 25 different households. Appellant had more transactions flagged on this Attachment than six convenience stores within less than a one mile radius. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

According to USDA data there at least 33 authorized retailers classified as convenience stores, medium groceries, large groceries, supermarkets and super stores within a two mile radius of Appellant. The data supports that 16 of the 25 households flagged at Appellant conducted a transaction the same day at a large grocery, supermarket or super store, and within one day of conducting a transaction at Appellant, 20 of the 25 households (HHs) listed, 80%, conducted a transaction at a large grocery, a supermarket or super store.

While some households may have conducted legitimate short timeframe transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided no vendor invoices of eligible items acquired to support its SNAP redemptions. No itemized cash register tapes were provided as evidence of eligible food sales. No federal business tax returns or state tax filings were advanced, and no banking records were provided. No beneficiary affidavits were advanced whereby households stated that they made multiple large purchases of eligible foods at Appellant in short timeframes. Thus, the owner has not provided a preponderance of evidence that the transactions on this Attachment are for eligible foods.

Attachment 2: Listed are 264 EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

A shopping analysis shows that recipients who frequented Appellant also shopped at larger stores, yet expended suspicious large dollar amounts at Appellant.
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The owner did not provide a price list of his inventory of eligible foods, nor did he provide vendor evidence of eligible food stock for the relevant review months, or itemized cash register receipts to support that the transactions cited were for eligible foods. An apartment complex is noted to be at 2020 Vineville Ave., however no evidence was advanced to support that the renters at this complex were SNAP recipients or that they shopped multiple times a day at Appellant. The large dollar transactions remain questionable considering the proximity of other larger authorized stores located in a few mile radius of Appellant. A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or mitigate the impact of the violations upon which they are based. There is no provision in the Act, or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees. Further, the regulations stipulate “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

CIVIL MONEY PENALTY

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) for a firm’s eligibility for a civil money penalty in lieu of permanent disqualification. Accordingly, Retailer Operations determined that Appellant did not qualify for a 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. 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 for the legitimacy of the transaction Attachments cited, by a preponderance of the evidence, it is more likely true than not true that violations did occur as charged by Retailer Operations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained. Under review, the denial of a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations 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. 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

February 12, 2018