

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

**Marvin Deli Grocery,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201798**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Marvin Deli Grocery (Appellant) from participation as an authorized food retailer in the Supplemental Nutrition Assistance Program (SNAP), as imposed by the Retailer Operations Division (Retailer Operations), was proper.

**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 August 15, 2017, Retailer Operations informed the owner that Appellant was in violation of the terms and conditions of the SNAP regulations based on EBT benefit 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 owner replied to the Charge letter on August 18 and 23, 2017. Retailer Operations issued a Determination letter dated September 21, 2017, that informed the owner that Appellant was permanently disqualified from participation in 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 trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, the firm 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 September 29, 2017, the owner appealed Retailer Operations' determination and requested administrative review of the sanction action. The appeal was granted by letter dated October 16, 2017.

### **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). Parts 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 § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot foods and hot food products prepared for immediate consumption."

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 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(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.”

### **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 electronic benefit transfer (EBT) transaction data during the period of January 2017 through June 2017. This involved four patterns of EBT transaction characteristics which are indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made too rapidly to be credible.
3. Multiple transactions made from individual benefit accounts within unusually short time frames.
4. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

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

- I run my store knowing the rules of SNAP and follow them. I do not believe the Charge Letter to be true.
- Many of my products end 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or I round up or down to the nearest dollar amount. That is one thing I must change. I included register receipts that show many of the products 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Multiple transactions made from the individual benefit accounts occurred because the cash register doesn’t save much in its memory. As individuals purchase large quantities of SNAP approved products, I ring up the sales according to the receipts.
- I realize that we were poorly trained to deal with the program to safeguard its integrity.
- Our intention was to help clients never to commit fraud against the program.

### **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:** During the review period, Appellant conducted 1,629 EBT transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When a disproportionate number of transactions end in same cents values it appears that these transaction amounts are contrived.

Contentions:

- The reason for this was that I rounded up the amounts thinking it was more convenient for us to process the transactions.
- Our intention was not to commit fraud, especially when most of those transactions were for small amounts.

All items actually purchased, had to be entered into the register in order to arrive at a total. Since SNAP transactions are electronic, no change is given to recipients. Thus, rounding down or up is not necessary. Furthermore, no evidence was advanced to support the contention that totals were rounded. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, in the absence of a preponderance of evidence to the contrary, these transactions are indicative of trafficking.

**Attachment 2:** This Attachment lists 61 transactions in sets of two transactions each, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is irregular.

Contentions:

- I was giving food to people in advance even when they did not have money and then when they received the deposits they would pay us.
- That was my mistake but in no way was I trying to commit fraud against the program.

Appellant does not have any shopping carts or hand baskets. Furthermore, the register area is located behind a plastic barrier with a small opening, and there is limited counter space for recipients to place eligible items. Considering the numerous steps involved to process a transaction, including the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging or handing back the items for carry out, and processing the transactions via the POS, these data sets were made too rapidly to be credible and are indicative of trafficking.

**Attachment 3:** Listed are 177 transactions in 73 sets of two or more transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Contentions:

- Information is the same case where we engaged in providing clients with food in advance of receiving the deposits in their accounts.
- In no way was our intention to commit fraud against the program.
- It was our inexperience in this line of business that got us where we are now.

Data shows that within a one mile radius of Appellant there are three authorized supermarkets, 19 small groceries, four medium grocery stores, three super stores, ten combination stores, and 49 other convenience stores. Twenty-four of the 38 households (HHs) flagged on this Attachment conducted SNAP transactions at larger authorized retail food stores the same day

they made a transaction at Appellant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Thus, the data supports that the flagged households did access other larger stores to use their SNAP benefits.

**Attachment 4:** Listed are 267 transactions conducted by 69 households 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

Contentions:

- There are many small amounts as well on the attachment.
- Our practice of helping clients and giving them food when they did not have money is what brought this situation upon us.
- Some of the larger purchase transactions are for SNAP approved products for the entire month. Purchases that include frozen meats and other food products add up to large amounts.

The owner attributed the high dollar transactions to recipients buying groceries for the whole month. Retailer Operations assessed the shopping patterns of three households and determined that these households shopped at larger and better stocked stores while at the same time conducting suspicious shopping transactions at Appellant, a convenience store.

### **Cash Register Tapes**

The owner provided 36 register tapes to support his pricing. None of tapes were itemized. They only listed dollar amounts and the total transaction amount. Moreover, the tapes did not include the dates, times, or name of store. As such, the tapes are not strong evidence in support of Appellant's contentions. Retailer Operations' record notes that because making separate transactions on the SNAP terminal device is time consuming, it is not likely that a cashier would take the time to process two separate consecutive transactions through the SNAP terminal device when the clerk could process a single combined charge through the POS, and then provide the recipient with separate cash register receipts if as contended, the register was not able to process all the items due to limited memory.

One EBT sales receipt was provided which was dated outside the review period.

### **Credit**

In his request for review the owner explained that he was "engaged in providing clients with food in advance of receiving the deposits in their accounts." This was the first instance whereby the owner claimed credit accounts as a defense for trafficking. Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits a credit violation is sanctioned with a one year disqualification period. If the retailer does not provide adequate proof of credit, the retailer shall be permanently disqualified for trafficking. A one year disqualification for credit cannot be entertained when by a preponderance of evidence it is determined that trafficking has more likely than not occurred.

To refute charges of trafficking in this matter, the owner had to provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that Retailer

Operations could compare such proof with transactions listed on the Attachments. Such evidence may include an accounts receivable ledger which lists the name of each SNAP recipient, the dates and amounts of each transaction, and what eligible items were acquired on claimed credit account transactions. No evidence of the purported credit was advanced for review.

When the owner signed the certification to become a SNAP retailer, he confirmed his understanding of and agreement to abide by program rules and regulatory provisions. He 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 claims he allowed credit accounts, a violation of SNAP regulations and rules.

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 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 (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 requirements could be readily obtained. Absent supporting evidence of contemporaneous credit accounts established by the owner, credit as a legitimate explanation for the transactions listed on the Charge letter is rejected.

Regarding the owner's denial of the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether the owner demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact. While the owner contends that the transactions on the Attachment are legitimate, no itemized cash register receipts were advanced as evidence of eligible foods sold at Appellant during the review period. Further, no vendor invoices or receipts were provided as evidence of Appellant's acquisition and stock of eligible foods to support its SNAP redemptions. No evidence of credit accounts was advanced. No bank records or federal or state tax records were provided. No customer affidavits were submitted.

The evidence that Appellant violated the SNAP regulations is furnished on the Charge letter Attachments. Government analyses of stores caught in trafficking violations during actual 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. SNAP transaction data is provided to FNS via each State's EBT processor on a daily basis in a format that is standardized nationwide. The EBT transactions are validated and loaded into a database for subsequent analysis. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those authorized stores and transactions meeting the pre-established criteria.

The system provides a series of spreadsheets and graphs that compare a specific store's data to the average for its firm type or to user-selected comparison stores. In addition, the system utilizes mapping software which translates the location address information into geo-codes and enables the user to map the locations of selected authorized stores and track recipient transaction locations. The actual case of trafficking is made by retailer compliance staff on the basis that the transaction patterns cannot be explained based on the store size, layout, inventory, recipient shopping histories, and other factors. Therefore, that Retailer Operations used computer printouts of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking were occurring at Appellant, is as valid a means of establishing facts as direct evidence obtained through an onsite investigation and the eye witnessing of trafficking.

### **CIVIL MONEY PENALTY**

No evidence was produced that Appellant met all the requirements to qualify for a CMP in lieu of permanent disqualification. To be considered eligible for a CMP, a firm must establish, by substantial evidence, its fulfillment of each of the criteria under 7 CFR § 278.6(i) of the regulations. The criteria 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 regulation allow no flexibility below the level of this stated standard.

## **CONCLUSION**

Upon review of all of the evidence in this matter it is determined that the evidence more substantially supports a conclusion that the SNAP transaction activity at Appellant was due primarily to SNAP benefit trafficking. Retailer Operations' analysis of Appellant's EBT 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. By preponderance, the evidence supports 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 any documentation for consideration for a CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP.

## **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

December 1, 2017