

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

Meezo Express LLC,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0192997

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 that a permanent disqualification of Meezo Express LLC (hereinafter “Meezo Express” or “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Meezo Express.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from April 2016 through September 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Meezo Express for SNAP participation as a convenience store on January 22, 2008. In a letter dated March 31, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of April 2016 and September 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between April 5, 2017 and May 10, 2017, the Appellant, through counsel, responded to the charge letter by expressing confidence that the alleged trafficking violations were likely committed by a single part-time employee (hereinafter "cashier") who worked at the firm for only a few months during 2016. The firm's owner insisted that neither he nor any member of his family had committed any violations themselves, and contended that he had no prior knowledge of the cashier's actions relating to SNAP. However, the owner suspected the cashier in the SNAP violations because the same employee was earlier caught stealing lottery tickets from the firm, and was fired sometime during October 2016. The cashier was later jailed in Jackson County, Michigan on unrelated criminal charges.

In support of its response, the Appellant provided several documents, including an affidavit from the firm's owner; a copy of the owner's passport showing that he was out of the country during a portion of the review period; 23 employee timecards for the cashier in question for the months of April through October 2016; and a printout from the Michigan Department of Corrections website showing the criminal history of the cashier. The Appellant further requested an evidentiary hearing to allow the owner to preserve his good name and reputation and to prove that the store owner and Meezo Express are not legally responsible for the fraudulent charges. The Appellant argued that an evidentiary hearing would also serve to ensure that FNS is not taking away the SNAP authorization from an honest person who was himself victimized by the cashier.

After reviewing the Appellant's response and documentation and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated May 16, 2017. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had

established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked May 23, 2017, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, *inter alia*:

*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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....***
[Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, *inter alia*:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, *inter alia*:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, *inter alia*:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, *inter alia*:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, *inter alia*:

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(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, *inter alia*:

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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant requests that all documentation previously submitted to the Retailer Operations Division be considered as part of the administrative review.
- It is not coincidence that the only alleged violations in the history of the store occurred when the cashier was employed at the firm.
- The cashier was properly instructed on the use of the EBT machine and just chose to cheat. Along with cheating on the machine, he was also stealing lottery tickets, which led to his dismissal.
- Appellant previously requested from the Retailer Operations Division the identity of the persons listed in the charge letter so that it could reach out to the individuals to try to establish their association with the cashier.
- The cashier's conduct was not foreseeable to the Appellant owner or his son. They mistakenly trusted the cashier, unaware of his criminal inclination, only to be victimized by him.
- Under these circumstances, Appellant hopes that FNS will see fit to allow Meezo LLC to continue to accept SNAP benefits. SNAP redemptions make up a great majority of the company's income, and the company will certainly fail if the disqualification is upheld.
- Given the fact that the Appellant owner and his son have never been cited for any infraction of any sort, and have never committed a crime, the proper result in this case would be to reinstate the SNAP authorization under whatever conditions USDA feels is

appropriate.

In support of its contentions, the Appellant submitted the following documentation:

- Two affidavits – one from the Appellant owner (submitted previously to the Retailer Operations Division), and the other from his son, who also works full-time at the store.
- A handwritten statement from the cashier, dated May 31, 2017, admitting that between March and October 2016 he made “mistakes” on the food stamp machine. According to the Appellant, this admission is completely compatible with the affidavits from both the owner and his son. From the Appellant’s perspective, it is very clear that the cashier is the person responsible for the violations.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on questionable SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm’s EBT transactions, but also information obtained from an August 15, 2016 store visit which was conducted by an FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Meezo Express is a small convenience store/gas station, approximately 840 square feet in size, operating in a suburban commercial area of Jackson, Michigan.
- At the time of the contractor’s visit, the firm had no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash register and one EBT point-of-sale device.
- The store appears to use optical scanners to process transactions.
- The store’s staple food stock is marginal in each of the four staple food categories. The store also sells a large amount of SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as gasoline, tobacco products, lottery tickets,

and other miscellaneous household merchandise.

- The checkout area consists of a very small, cluttered countertop where items can be placed to be rung up. The checkout area is not suitable for conducting large or rapid transactions as there is no conveyor belt to expedite the purchase and not enough space to place more than a few small items at one time.
- There is no indication from the store visit report that the firm has a special pricing structure, although judging by the contractor's photographs, most items appear to end in 9, such \$1.49, \$1.89, etc.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small convenience store/gas station. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items, especially considering the extremely constricted checkout area and the absence of shopping carts and baskets. The available food was primarily of a low-dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk or specialty items.

Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transactions

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 17 sets of transactions (51 transactions in all, comprising 12 different households) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 182 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in Jackson County, Michigan. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Jackson County was \$6.29. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In comparison with other area stores, the patterns of spending identified in the two charge letter attachments are highly irregular. It is the determination of this review that Meezo Express, with its limited and primarily low-dollar inventory, lack of shopping carts and baskets, and its severely constricted checkout area cannot support the large numbers of repetitive and high-dollar transactions identified in the charge letter.

It is noted that the Appellant did not, at any point, provide an explanation or any evidence to refute the Retailer Operations Division's allegations of trafficking. Instead, the Appellant appears to concede that violations likely occurred, blaming a former employee for the suspicious transactions.

Therefore, it is the determination of this review that Meezo Express likely trafficked in SNAP benefits. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Violations Likely Committed by Former Employee

In its response to the charge letter as well as in its request for administrative review, the Appellant, through counsel, pointed the finger of blame for the alleged violations at a former part-time employee who worked at the firm from approximately March 2016 to October 2016. The Appellant came to this conclusion by comparing the transactions listed in the charge letter with the cashier's work schedule and timecards. The Appellant owner also suspected that the cashier was probably the violator because the cashier had been caught stealing lottery tickets from the firm. Both the Appellant owner and his son submitted affidavits attesting that they had never committed violations themselves. However, both affidavits indicated strong suspicions that the cashier was the culprit. In its request for review, the Appellant submitted a handwritten statement from the cashier, in which he admitted to making "mistakes" on the EBT machine, which he "knew [he] wasn't suppose[d] to do." The cashier concludes: "I apologize for that and take [responsibility] for those transactions."

The Appellant contends that the cashier had been properly instructed on the use of the EBT machine and simply chose to cheat. The Appellant further argues that the cashier's conduct was not foreseeable to the Appellant owner, who mistakenly trusted the cashier, unaware of his criminal past.

Finally, in its response to the charge letter, the Appellant, through counsel, requested an evidentiary hearing to allow the owner to "preserve his good name" and to prove that the store owner and Meezo Express are not legally responsible for the fraudulent charges. The Appellant argued that an evidentiary hearing would also ensure that FNS is not taking away the SNAP authorization from an honest person who was himself victimized by the cashier.

With regard to these contentions, the record shows that on October 12, 2007, the Appellant owner signed an application to participate as a retailer in SNAP. The owner also signed a reauthorization application on August 29, 2013. By signing these applications, the owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the Appellant owner agreed to abide by Program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. An owner is not free of responsibility simply because he or she was not in the vicinity at the time

the violations occurred or because he or she was unaware of or uninvolved in the violations. Regardless of which clerks are operating the cash register at a given time or whom firm ownership authorizes to handle store business, the ownership of the firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of its employees would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of USDA.

Therefore, the contention that the violations were not the fault of the Appellant owner does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

With regard to the Appellant's request for an evidentiary hearing, it is noted that in September 2003, revisions to parts 278 and 279 of the SNAP Regulations eliminated in-person hearings as part of the administrative review process. In general, administrative reviews that are conducted in accordance with 7 CFR § 279 are done in writing. Neither the Food and Nutrition Act nor USDA regulations contemplate formal discovery procedures and an adversary hearing as part of the administrative review process. Thus, there is no provision for confrontation with Department witnesses and cross-examination of any such witnesses during an administrative review. However, due process rights are protected by the provision within the Act which provides for judicial review. Once an administrative review decision has been made, if the Appellant is dissatisfied with the determination, 7 U.S.C. § 2023 provides for the right to a judicial review and a trial de novo.

No Prior Violations

The Appellant, through counsel, argues that it is not coincidence that the only alleged violations in the history of the store occurred when the cashier was employed at the firm. The Appellant contends that since the owner and his son have never been cited for any infraction of any sort, and have never committed a crime, the proper result in this case would be to reinstate the firm's SNAP authorization.

With regard to this contention, the law is clear that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B). As noted earlier, the purpose of this review is to determine whether or not the Retailer Operations Division took appropriate action, consistent with SNAP regulations, in its imposition of a permanent disqualification against Meezo Express. As long as the administrative action taken by the agency fully conforms to SNAP regulations, this review has no authority to dismiss or reduce a period of disqualification.

In this case, the sanction imposed by the Retailer Operations Division is wholly in line with existing statute and regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations. Therefore, the firm's prior compliance with program rules investigation does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Hardship to Appellant

The Appellant, through counsel, has stated that SNAP transactions make up a great majority of the company's income, and the company will certainly fail if the disqualification is upheld in administrative review.

With regard to this contention and as noted previously, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, 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 Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative sanction does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. Based on a review of the case record, there is no evidence that the Appellant requested a CMP in lieu of disqualification when it responded to the charge letter. The Appellant also made no mention of a trafficking CMP nor submitted any documentation to support its eligibility of a CMP in its request for administrative review.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Meezo Express from SNAP participation. This data provided sufficient evidence that the questionable transactions that occurred during the review period were characteristic of trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns were most likely the result of trafficking. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as determined by the Retailer Operations Division. As such, the decision to impose a permanent disqualification against the Appellant, Meezo Express, under the ownership of Imad Saleh, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

December 5, 2017