

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

Mega Mini Mart,

Appellant,

v.

Case Number: C0207897

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Mega Mini Mart, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated May 25, 2018.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, .6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated April 30, 2018, 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 during the months of October 2017 through March 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In a facsimile dated May 4, 2018, Appellant replied to the charge letter and generally stated that it denies all allegations of trafficking in regards to the notice dated April 30, 2018. Ownership was not aware that SNAP recipients have limitations as to how much they can spend or how often they can visit the store. Appellant stated that ownership does not wish to ask for a Civil Money Penalty because ownership does not agree with the accusations against the firm. Appellant gave a list of reasons as to why it disagreed with the accusation. They are as follows:

1. I sell a variety of eligible food items that are listed under current SNAP regulations.
2. There is no written or documented limit as to how much a person can spend in my store using their EBT card.
3. There is no written or documented limit as to how often a person can visit and shop in my store using EBT.
4. I have many customers that are ineligible for EBT that spend a similar or same amount of money in groceries that would be considered eligible food items.
5. I have many customers that are ineligible for EBT that frequent my store as often as my EBT customers.
6. I receive merchandise in bulk amount at a very decent wholesale price allowing me to sell in bulk.
7. I frequently sell items in bulk at a discounted rate.
8. There are many eligible food items that I sell that have to be ordered due to light food traffic.
9. There is no established definition in SNAP regulations as to how much is an excessively large purchase.

Retailer Operations Division considered Appellant's reply and the evidence of the case and issued a determination letter dated May 25, 2018. The 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. The letter also stated that Retailer Operations Division 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, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated June 1, 2018, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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 ...*” (*Emphasis added*)

7 CFR § 278.6(c) reads, in part, “*Review of Evidence.* 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)...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...”

7 CFR § 278.6(e)(1) reads, in part, “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 that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of October 2017 through March 2018. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple purchase transactions were made too rapidly to be credible.
2. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
3. Excessively large purchase transactions were made from recipient accounts.

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.

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

- Request for CMP in lieu of Disqualification.
- Most of the customers buy groceries for their entire household as would a customer at a fully-fledged grocery store
- Each household card can be used numerous times throughout the day for the reason that there are numerous individuals in each large family.
- There were never any violations of USDA and/or SNAP law and the Petitioner has never been under investigation by the USDA for SNAP trafficking charges.
- The petitioner and his employees review their SNAP user's manual on a regular basis.
- Petitioner sells a high volume of meat that account for what has been determined by USDA to be excessively large transactions.
- It is very common for customers to complete a transaction and then notice a daily special running on an expensive specialty product that is displayed near the cash register and then want to make additional large purchases.
- Many customers will buy large quantities of energy drinks (case), Mexican soda (case), and specialty cheese by the pound, custom cakes for cultural celebration, salted beef packs, Columbian corn tortillas and large bags of rice. They buy these items exclusively since there are no other stores that sell these items.

Appellant provided the following documentation in support of its position:

1. Exhibit A: Signed statement from a temporary worker.
2. Exhibit B: Signed statement from the owner.
3. Exhibit C: Signed statements from four customers regarding their shopping habits.
4. Exhibit D: 33 pages of purchase invoices/receipts dated only for the month of October during the review period.
5. Exhibit E: A printed list of items showing the store's purchase price and the store's resell price.
6. Exhibit F: 66 black and white photographs of the store's stock

The preceding may represent a brief summary of Appellant's contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on July 19, 2017. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a March 19, 2018, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant

that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 800 square feet.
- No shopping carts and four hand basket available for customer use.
- An optical scanner available. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No food stored in an area outside of public view and no storage freezers, coolers or food stored offsite.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Coffee (\$7.89), El Ranchero Beef (\$5.99), Supremo Pork (\$6.39) and Queso Cheese (\$6.89).
- Store stocks a substantial amount of non-food items such as but not limited to paper products, cleaning products, health and beauty aids, tobacco products, alcohol products, lottery, mobile phone/phone cards, household decor items and automotive products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh meat or seafood
- Some empty spaces on shelves.
- No kitchen/prepared food area, no hot food sold and no food sold for on-site consumption.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in 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 the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter – Multiple purchase transactions were made too rapidly to be credible.

There were 14 SNAP transactions that met the parameters of this attachment. Each transaction set was completed **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. Retailer Operations considered this to be a strong indicator because the second purchase of items

would have to be transported to the limited counter area using only the limited hand baskets available. These multiple purchase transactions appear to have been made too rapidly to be credible and are indicative of trafficking given the time required for the cashier's handling of individual items including scanning or manually entering a price, bagging the items for carry out, a card swiped, a pin entered, an approval indicated and a receipt printed.

Appellant contends that it is very common for customers to complete a transaction and then notice a daily special running on an expensive specialty product that is displayed near the cash register and then want to make additional large purchases. With regard to this contention, it is important to note that the store visit photographs and documentation do not show that the store offers daily specials, that the store carries expensive specialty products or that they are displayed near the cash register. In fact the most expensive items noticed in the store was coffee priced at \$7.89. The store's characteristics and stock do not justify the transactions listed in Attachment 1 of the charge letter.

Based on the analysis above, it appears that the transactions cited in the charge letter are contrived and therefore, in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

There were 22 sets of 47 SNAP transactions, totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant contends that each household card can be used numerous times throughout the day and there are numerous individuals in each large family. With regard to this contention, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities, the makeup and shopping patterns of SNAP household, and are indicative of trafficking.

Moreover, it is not illegal for a SNAP household to make two or more purchases during the same store visit; however, it is unlikely that legitimate purchases of eligible foods are being made when such transactions are of large dollar values, or cumulatively large values, and they are processed in less time than it would take to hand-carry the items to the counter and to ring up all the food items necessary to add up to those large dollar amounts. The store visit report does not indicate any compelling reason for customers to consider Appellant a first choice destination to fulfill large purchases of food, or that they would have made relatively large, multiple purchases at the firm within a set time period, there being no great price advantage, profusion of specialty or ethnic goods, or special or custom services rendered and no fresh meat or seafood.

Appellant contends that many customers will buy large quantities of energy drinks (case), Mexican soda (case), and specialty cheese by the pound, custom cakes for cultural celebration,

salted beef packs, Columbian corn tortillas and large bags of rice. They buy these items exclusively since there are no other stores that sell these items. With regard to this contention, the record reflects that SNAP households shopping at Appellant's store also traveled to other convenience stores as well as numerous supermarkets and superstores, including ethnic stores, during the review period which is an indication that Appellant is not considered the only shopping source where SNAP households obtain SNAP eligible and specialty items. It is also important to note that energy drinks are considered ineligible and cannot be purchased using SNAP benefits.

Based on the analysis above, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

Attachment 3 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 163 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. The record reflects that Appellant had a 65 transaction (39%) cluster in the range of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The pattern of frequent and large transactions, and their clustering around certain dollar levels, seems implausible and tends to suggest transaction structuring especially when Appellant's available stock does not justify these transaction amounts.

Appellant contends that most of the customers buy groceries for their entire household as would a customer at a fully-fledged grocery store. When purchasing food, people generally do not spend large sums at convenience stores. They usually stop at convenience stores to pick up quick snacks and/or a beverage, or for a few staple food items that they need, such as bread, milk, tortillas, or a can or two of some food, but which are not considered worth a trip to the supermarket to get. It is rare for a convenience store to have purchases such as those cited in the charge letter. Additionally, store visit photographs and documentation as well as an analysis conducted on several SNAP households during the review period do not indicate that SNAP households considered Appellant as the only source of SNAP eligible foods or that Appellant carried the breadth and depth of stock to justify the charge letter transactions. Appellant provided 33 pages of purchase invoices/receipts for the month of October 2017, only. It is noted that the invoices/receipts did not contain any purchases that would justify the transactions as cited in the charge letter.

Appellant contends that it sells a high volume of meat that account for what has been determined by USDA to be excessively large transaction. With regard to this contention, Appellant did not provide any documentation or invoices/receipts as evidence to this contention. Based on the store visit photographs and invoices/receipts provided, Appellant does not stock or offer for sale large quantities of meat. In fact, the store visit photographs suggest that Appellant does not carry fresh meat or seafood nor does it have the capacity in which to stock large quantities of meat

products. Therefore Appellant's contention that it sells a high volume of meat does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

The Appellant store was compared to other nearby larger seemingly better stocked stores and it was found that Appellant's transactions and transaction amounts were significantly greater. Appellant's average transaction amount was found to be more than 16 percent higher than the average transaction amount of other convenience stores in Gaston County NC and was also found to be higher when compared to larger nearby stores.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

Appellant contends that there were never any violations of USDA and/or SNAP law and it has never been under investigation by the USDA for SNAP trafficking charges. In reference to your contention that your firm has never previously been cited for any program violation, such a record of program participation with no previously documented violations does not constitute valid grounds for mitigating the impact of the present serious charge of trafficking. Further, the Act itself provides that a store's disqualification "shall be permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store."

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership 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 matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states 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, or this part. 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.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in three attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of

foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other small grocery stores in the State.

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, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

The Appellant requested consideration for paying a fee, as a consequence, in lieu of permanent disqualification. Appellant contends that ownership and the employees review their SNAP user's manual on a regular basis. Appellant was notified in the charge letter dated April 30, 2018, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant also did not provide the required regulatory documentation during this review to be considered for the trafficking CMP in lieu of disqualification.

Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Mega Mini Mart from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Mega Mini Mart is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right 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 you 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 (FOIA), 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.

Monique Brooks
Administrative Review Officer

October 10, 2018