

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

Mini Grocery Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0197177

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Mini Grocery Mart (hereinafter “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, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Mini Grocery Mart.

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 November 2016 through January 2017. 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.
- The majority or all of an individual recipient's SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Mini Grocery Mart for SNAP participation as a convenience store on January 6, 2016. In a letter dated March 13, 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 November 2016 and January 2017. 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 a letter received by the Retailer Operations Division on March 21, 2017, the Appellant responded to the charge letter, generally stating that the firm did not commit any violations. The Appellant argued that customers sometimes visit the store more than once a day, but that the store cannot refuse service for this behavior. The Appellant claimed that its SNAP transactions were genuine and requested that the trafficking charges be waived. The Appellant promised that it would be more careful in the future.

The Appellant did not submit any documentation to support its response to the charges.

After reviewing the Appellant's response 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 26, 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 made the following summarized contentions in its request for administrative review, in relevant part:

- The firm received the disqualification notice, but it did not commit any violations.
- Customers come to the store, buy things, and then leave. Sometimes they come back to the store and purchase more stuff.
- Sometimes customers will shop with another person, and say that they are buying things for their friend.
- Sometimes the EBT card holder will send kids to buy things, too.
- Appellant may not tell customers that they cannot buy stuff on the same card, or that they cannot use the card a second time. If the Appellant refuses these transactions, customers will not continue to shop at the store.
- If FNS has any notices or posters to explain what shoppers can and cannot do, the Appellant will display them in the window.
- If transactions from the same card are a violation, Appellant apologizes and will remember this for next time.
- The store has items that are priced in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) intervals, so the purchase amount sometimes comes 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant will send in some receipts with these amounts.

The Appellant did not submit any evidence or documentation in support of its contentions.

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 suspicious 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 a December 18, 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:

- Mini Grocery Mart is a small convenience store, approximately 800 square feet in size, operating in an urban residential area of Baltimore, Maryland.
- 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 does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories. The store also sells 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 tobacco products, lottery tickets, and other miscellaneous household merchandise.
- The checkout area consists of a very small countertop (roughly 12 inches by 18 inches) 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. Additionally, the cashier is located behind a Plexiglas barrier. All transactions are conducted through a small window, making large or rapid transactions logistically difficult.
- 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 \$0.99, \$1.69, etc.

The available inventory of SNAP-eligible food items at the time of the store visit showed stock that would be typical of a small convenience store. 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 Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 35 sets of transactions (81 transactions in all) 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)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Considering the limited staple food stock in the Appellant store and the availability of much larger stores with greater inventory in the immediate vicinity, it makes little sense that households would spend so much of their benefit allotment in such a repetitive manner at a moderately stocked convenience store.

The Appellant has argued that its customers make repeat visits to the store. It further claims that customers will sometimes shop with another person and buy things for that person with the same EBT card. The Appellant also states that EBT card holder will occasionally send their kids back to the store to buy things. The Appellant contends that it cannot tell customers how to spend their benefits. The Appellant argues that if the store made a habit of doing this, it would lose business.

With regard to these contentions, it is true that SNAP regulations do not govern or mandate the manner in which a household spends its benefit allotment, including how many times or how frequently a household may use its EBT card at a particular store or how large a transaction can be. However, the transactions noted in the charge letter attachments are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores. This review does not contend that repetitive or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Unfortunately, the Appellant has offered no evidence whatsoever to prove that the transactions listed in Attachment 1 were legitimate purchases of eligible food. Such evidence could have included itemized cash register receipts or other documentation to show that trafficking was not occurring.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions to avoid detection, a firm's explanation for why these repetitive SNAP transactions are occurring in a small convenience store should be both rational and compelling. The Appellant's contentions in this regard are neither.

Charge Letter Attachment 2: In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists 36 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment in a very short period of time. A suspicion of trafficking is reinforced when these balance-depleting purchases occur in small stores such as Mini Grocery Mart, where there is limited inventory and a lack of shopping carts or baskets to help facilitate large purchases. It makes little sense that households would regularly spend almost the entirety of their SNAP allotment in a single transaction or in a series of rapid transactions at this store.

Moreover, a government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes about two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent.¹ Depleting a large portion of one's SNAP balance in a very short period of time, leaving little or no benefits for the rest of the month, is inconsistent with normal shopping behavior of SNAP households.

Unfortunately, the Appellant did not offer any contentions relating to the transactions found in Attachment 2. Without a valid argument or credible evidence from the Appellant to demonstrate what was actually purchased in the transactions listed in this attachment, this review has little option but to conclude that the transactions were, more likely than not, the result of trafficking.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 368 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in the state of Maryland. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Maryland was \$7.70. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Given that the Appellant firm does have a small inventory of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an occasional purchase where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the absence of shopping carts and shopping baskets and the severely constricted checkout area. The substantial number of high-dollar purchases in a three-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

¹ See U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

Considering the fact that the store sells primarily low-priced merchandise, and considering how many items it would take to add up **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, it is just not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts or baskets, especially since larger, better stocked stores are in the vicinity of the Appellant firm. According to agency records there are at least 30 comparable or larger stores located within a one-mile radius of the Appellant firm, including two superstores and four medium grocery stores.

Unfortunately, the Appellant has not offered a single argument or piece of evidence to justify the transactions listed in Attachment 3.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Mini Grocery Mart, with its limited and primarily low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 3. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that Mini Grocery Mart likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. 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.

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), a civil money penalty in lieu of permanent disqualification for trafficking cannot be granted in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Mini Grocery Mart from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant.

Based on a review of all available information in this case, it is the determination of this review that the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed. As such, the decision to impose a permanent disqualification against the Appellant, Mini Grocery Mart, under the ownership of Sukhwinder Singh, 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 6, 2017