

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

**Adams Grocery Store,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0180677**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance (“ROC”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Adams Grocery Store (“Appellant”).

**ISSUE**

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on February 18, 2021.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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**

In a letter dated April 15, 2015, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC's charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant's contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated February 18, 2021. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On February 24, 2021, Appellant appealed the ROC's determination and requested an administrative review of this action. The appeal was granted.

### STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

### CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented 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 in the event that personnel of the firm engaged in trafficking of SNAP benefits.

7 CFR § 278.6(a) states, in part:

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** . . . .  
(Emphasis added.)

7 CFR § 278.6(a) states, in part:

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) reads, in part:

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(e)(1)(i) reads, in part:

FNS shall . . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, in part, as:

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 . . . .”

Also at 7 CFR § 271.2, eligible food is defined as:

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)(2)(ii) states, in part:

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.

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from November 2014 through February 2015. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- Multiple transactions made from the same accounts in unusually short time frames; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- Appellant has not has any previous issues with SNAP compliance.
- USDA did not meet its burden of proof.
- The determination is not supported by facts.
- Appellant is located near many mid-rise housing complexes where SNAP recipients live.
- Appellant has a large deli department and sells a variety of staple foods. The store visit showed Appellant stocked over 20 units of goods in most categories.
- Appellant carries foods which cater to the Latinx community and other ethnic communities.
- Appellant is located near a bus stop.
- Customers and family members return to the store multiple times daily to make additional purchases.
- Failure to provide complete and timely responses to the FOIA request and appeal adversely affects Appellants ability to provide a defense. Information redacted by FOIA should not be considered in administrative review.
- On three occasions, investigators unsuccessfully attempted to purchase nonfood items with SNAP benefits at Appellant.
- There is no basis to charge a retailer with trafficking based on computer statistics when no on-site investigation has occurred.
- There is no explanation for why these transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** are unusually large for Appellant.
- Appellant can fulfill the entire shopping needs of its customers.

- Only 5% of Appellant’s transactions are considered large, and less than 1% were back-to-back transactions, which are not patterns of unusual activity.
- Appellant cannot prohibit a SNAP participant from shopping more than once per day.
- In *Skyson USA, LLC v. United States* the court noted it is not unusual for a customer to shop at a store one or more times a day.
- Appellant denies the allegations.
- Appellant sells expensive meats and infant formula.
- Staff were regularly trained in the proper handling of SNAP transactions.

In support of its allegations, Appellant provided the following documentation:

- Signed statements from customers;
- A five-page statement signed by the owner;
- Approximately 250 pages of documents concerning Appellant’s FOIA request, FOIA appeal, and responses to those documents;
- Three negative RIB investigations;
- Approximately 10 pages of customers statements;
- Approximately 6 pages of employee affidavits;
- Approximately 5 pages of its redacted FOIA response;
- Approximately 15 pictures of the store and surrounding area; and,
- The SNAP Training Guide for Retailers.

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

### **ANALYSIS AND FINDINGS**

Appellant contends USDA did not meet its burden of proof. As stated above, in an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed.

Regarding Appellant’s denial of violations, this review examines the relevant information regarding the determination. Once the ROC establishes trafficking occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Appellant contends failure to provide complete and timely responses to the FOIA request and appeal adversely affects Appellants ability to provide a defense. Appellant also asserts that information redacted by FOIA should not be considered in administrative review. Appellant did not explain why the delay to receive a response to its FOIA request adversely effected its defense to the trafficking determination. There are a number of reasons why information is withheld in response to a FOIA request, such as avoiding revealing investigative techniques which could undermine efforts to eradicate fraud or withholding information which would violate the privacy

of SNAP participants. These reasons are fully explained in the letter which accompanied the response to the FOIA request and are not repeated here.

### **Store Characteristics**

Appellant contends it has a large deli department and sells a variety of staple foods, including foods which cater to the Latinx community and other ethnic communities. Appellant asserted it can fulfill the entire shopping needs of its customers and that it stocked over 20 units of goods in most categories.

In reaching a disqualification determination, the ROC considered information obtained during a February 12, 2015 store visit conducted by a USDA contractor to observe Appellant'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 documented the following store size, description, and characteristics:

- Store size is approximately 750 square feet with no area of food storage outside of public view;
- Available inventory of SNAP-eligible food items was typical of a medium grocery store including deli meats and cheese, prepared sandwiches, and other stock which was comprised predominantly of inexpensive items,
- There was no evidence the store carried foods that catered to particular ethnic groups;
- Only one cash register and one electronic SNAP terminal device;
- No shopping carts or hand baskets;
- No scanners or conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

Appellant did carry more than 20 stocking units in a variety of categories, including dairy products, deli meats, and (frozen) fish. However, the stock is not sufficient to fulfill all shopping needs of most customers, as the store failed to carry many common staple food items such as chicken, turkey, sour cream, yogurt, bell peppers, and onions. The only fresh fruit carried by Appellant was bananas.

In addition, the store's checkout counter space area was small allowing little surface area to place large purchases and making it impractical to process more than one customer at a time.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. The available food was primarily of a low-dollar value and there was no hint that the firm sold items in bulk. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

## Repeat Transactions by the Same Household

Attachment 1 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Appellant contends only 53 transactions, which is less than 1% of its transactions, were repeat transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are 125 repeat transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant is correct that it is located somewhat near a bus stop, but there are many other access points to public transportation in the nearby area.

Appellant contends it is conveniently located near many mid-rise housing complexes where SNAP recipients live. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

The Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant, including a supermarket located .11 miles away. There are 22 stores of Appellant's size or larger located within .5 miles of Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

5 U.S.C. § 552 (b)(7)(E).

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5 U.S.C. § 552 (b)(7)(E).

Appellant contends customers and family members return to the store multiple times daily to make additional purchases. Appellant also cited *Skysen* as saying it is not unusual for a customer to shop at a store one or more times a day. While there are legitimate reasons why a SNAP recipient might return to a medium grocery store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a medium grocery store. Spending sizable portions of one's SNAP benefit allotment in a medium grocery store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a

firm's explanation and evidence for why these transactions **5 U.S.C. § 552 (b)(7)(E)** in a medium grocery store should be both rational and compelling. Appellant's explanation is neither.

### **Large Transactions**

Appellant contends that there is no explanation for why these transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** are unusually large for Appellant. Appellant also insists that since only 5% of Appellant's transactions are considered large, this is not a pattern of unusual activity. As previously stated, the food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend overly large sums at such stores. They usually stop at medium grocery stores to pick up a few staple food items and deli items. It is rare for a medium grocery store such as Appellant's to have purchases like those included in Attachment 2 to the charge letter.

**5 U.S.C. § 552 (b)(7)(E).**

Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to three SNAP-authorized medium grocery stores located within **.05 miles of Appellant**. Appellant's average SNAP transaction was **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** over 1.4 to over 2 times larger than the average transactions of the nearby comparable firms. Every transaction included in Attachment 2 was many times larger than the average transaction at these neighboring medium grocery stores.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **No Control Over Benefit Use**

Appellant insists that it has no control over how and when SNAP customers spend their benefits. In truth, 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. Rather, they display characteristics not typically found at medium grocery stores and are indicative of trafficking.

## **Expensive Offerings**

Appellant asserts it sells expensive meat items which explain the large purchases. The evidence does not support this contention. Appellant does sell cheese and meat by the pound. It is reasonable to expect customers to purchase deli items from Appellant. However, Appellant did not provide any explanation for why the purchase of these deli items would result in much higher transactions, on average, than neighboring medium grocery stores, which also sold fresh deli items. The store review report documented that the firm did not have meat or seafood specials or bundles. Appellant did not provide any receipts or invoices in support of its contentions.

While there may have been occasions when Appellant sold expensive items, based on the evidence from the store visit and lack of corroborating receipts or invoices, it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

## **Appellant's Responsibilities**

Appellant insists that staff were regularly trained in the proper handling of SNAP transactions. Appellant provided signed letters from employees in support of this contention. When ownership signed the FNS application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification document include trafficking. Regardless of whom the ownership of a store may choose to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

## **No Applicable Mitigating Factors**

Appellant contends that trafficking did not occur because investigators unsuccessfully attempted to purchase nonfood items with SNAP benefits at Appellant on three occasions. Appellant is correct that investigators unsuccessfully attempted to purchase nonfood items with SNAP benefits at Appellant on three occasions. However, this does not prove that Appellant did not traffic during the investigative period. Appellant might only traffic with regular customers who are well-known to Appellant's staff.

Appellant asserts that this is the first time there has been an issue related to SNAP. A record of program participation with no documented previous violations, however, does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

## **Infant Formula**

Appellant contends that high transaction amounts are due in part to selling expensive infant formula. It would be unusual for a SNAP household to purchase baby formula with SNAP benefits, as households who participate in SNAP are eligible to participate in the Special

Supplemental Nutrition Program for Women, Infants and Children (WIC). WIC has a more lenient income threshold for participation - and a higher participation rate of eligible participants - than SNAP. WIC provides participants with vouchers for baby formula as well as other staple items, such as orange juice and cereal. As Appellant is a WIC retailer, WIC participants would likely purchase all their infant formula, as well as other expensive staple goods, with their WIC benefits.

### **Customer Statements**

With regard to customer statements provided by Appellant that purport to establish that questionable transactions were legitimate and no trafficking occurred, the truth of such statements cannot be verified. ROC did review the SNAP transaction activity of the six individual who submitted letters to Appellant. Five of them regularly shopped at large stores. The six individual only had SNAP benefits for two days, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** at Appellant. Customers engaging in trafficking transactions would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate.

### **Evidence of Trafficking**

Appellant argues the determination is not supported by facts and there is no basis to charge a retailer with trafficking based on computer statistics when no on-site investigation has occurred. As previously stated, 7 CFR § 278.6(a) states, in part:

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** . . . (Emphasis added.)

FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. This tool does not determine that trafficking has occurred. The ROC must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROC conclude whether questionable transactions were, more likely than not, the result of trafficking. Transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the suspicious patterns displayed and the other supporting evidence in the file - and in the absence of any reasonable explanations for such transaction patterns - the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

## Summary

The ROC determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROC's assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROC considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability and characteristics of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROC's determination that Appellant most likely trafficked in SNAP benefits. 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 must disqualify the firm permanently.

## CIVIL MONEY PENALTY

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of April 15, 2015. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction by this deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROC. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Office of Retailer Operations and Compliance to deny Appellant a civil money penalty is sustained.

## **CONCLUSION**

The record has yielded no indication of error in the finding by the Office of Retailer Operations and Compliance that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Adams Grocery Store from participating as an authorized retailer in SNAP is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

May 18, 2021