

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

**Mondonguito Grocery Store,**

**Appellant,**

**v.**

**Case Number: C0204578**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Mondonguito Grocery Store (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division (Retailer Operations) was appropriate.

**ISSUE**

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

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may file a written request for review of the administrative action with FNS.

**CASE CHRONOLOGY**

By Charge letter dated January 10, 2018, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and

repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

Retailer Operations issued a Determination letter dated January 25, 2018, when it had not received a timely reply from the owner. Retailer Operations then received Appellant's reply letter dated January 15, 2018, which had been posted for one day delivery on January 16, 2018. Retailer Operations undertook a review of the reply from the owner and subsequently issued another Determination letter dated January 30, 2018.

This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated January 29, 2018, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated February 7, 2018.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, the Appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

## **CONTROLLING LAW AND REGULATIONS**

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

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: “Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption.”

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(b)(2)(ii) states: “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(i) states: “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.”

### **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP EBT transaction data during the period of May 2017 through October 2017.

The patterns of transaction characteristics indicative of trafficking are:

1. An unusual number of transactions ending in a same cents value.
2. Multiple purchase transactions made too rapidly to be credible.
3. The majority or all of individual recipient benefits exhausted in unusually short periods of time.
4. Excessively large purchase transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

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

- I request review based on delivery mishandling. I mailed all correspondence timely. The delivery for overnight services was not fulfilled by USPS.
- I feel there is no wrongful mishandling of SNAP in my establishment.
- I have never had any citations with benefits.
- My store is family run and we try to make is convenient to my customers and it has become a place of excellency [sic].
- Disqualification will cause a great burden to our financial needs.

## ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 167 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When there are a disproportionate number of transactions that end in same cents values it appears that these transaction amounts are contrived. In the absence of any compelling evidence to the contrary, these transactions are indicative of trafficking.

Contentions:

- Many foods are priced in exact dollars without cents.
- Some customers choose to pay a certain amount from their benefits and pay the remaining with cash or debit cards.

Based on the onsite store visit of August 22, 2017, Retailer Operations determined that Appellant's inventory consisted of items largely priced to end in .x9 cent values. The FNS contractor noted that Appellant did not have an unusual pricing structure, such as items ending in zero cents, and that transaction totals were not routinely rounded up or down at checkout. No change is provided with SNAP transactions, therefore there is no incentive to price items in a certain way since there is no inconvenience with change.

The owner provided no price list of the eligible foods at Appellant. No itemized cash register tapes were advanced. No recipient statements were provided to support that beneficiaries asked that **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** amounts be deducted from their benefits. The owner has not by a preponderance of the evidence addressed this Attachment to support that it lists eligible SNAP transactions.

**Attachment 2:** Listed are 25 sets of transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The owner contends:

- During rush hours I have an extra cashier run a separate customer simultaneously.
- I have one terminal but my second cashier has already run the balance on the following customer.

The onsite report indicates there were no handheld baskets or shopping carts to assist recipients with the collection and movement of large volumes of items in the store that might total to high dollar amounts. Retailer Operations estimated the enclosed checkout area had about two square feet of space to place items, making the logistics of rapid large dollar transactions challenging. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The owner did not provide attestations from any staff or recipients that totals are run simultaneously to expedite checkout, or specify what hours he considers to be rush hours. As such, the owner has not by a preponderance of the evidence demonstrated that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than trafficking.

**Attachment 3:** Listed are 76 transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When compared to six nearby convenience stores Appellant had many more transactions on this Attachment than any of the other stores.

Contentions:

- The store is in a busy area where there are some housing and senior complexes.
- My store is the local supplier and many customers exhaust their full benefits in a single transaction or short period of time due to distance from supermarkets.

The data shows that located within a one mile radius of Appellant that are at least 21 authorized larger stores including supermarkets and super stores, one at .33 miles and another at a distance of .73 miles. There are also 33 authorized convenience stores within a one mile radius of Appellant. As such, SNAP beneficiaries have a wide assortment of authorized stores at which to redeem benefits. The owner provided no recipient affidavits to support his contention as to why these recipients choose to expend their benefits at this convenience store with a limited variety of staple foods.

**Attachment 4:** Listed are 254 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Contentions:

- Periodically I provide fresh meats, seafood and produce and let my customers know.
- The price tends to fluctuate on fresh meats and seafood and it explains the large transactions.

5 U.S.C. § 552 (b)(7)(E).

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. It is Appellant's burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious in the Attachments provided with the Charge letter. This burden has not been met.

While some households may have conducted legitimate transactions at Appellant, insufficient evidence was presented to support this argument. The owner provided no vendor invoices of eligible items acquired in inventory to support Appellant's SNAP redemptions. The owner did not provide documentation to support the claim of meat, seafood and produce sales. The owner provided no itemized cash register tapes for the review months. No pricing information was advanced. No SNAP customer statements were provided to support that the transactions listed were for eligible foods. No federal business tax returns or state tax filings were advanced, and no banking statements were provided. Thus, the owner has not provided a preponderance of evidence that the transactions on various Attachments are for eligible foods rather than the result of trafficking.

### **CIVIL MONEY PENALTY**

The owner did not submit documentation to prove that Appellant met the trafficking CMP requirements as stipulated in the regulations at 7 CFR Section 278.6(i). These regulations specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Based on empirical data and in the absence of a preponderance of evidence of the legitimacy of the transactions on the Attachments, by a preponderance of the evidence, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

## **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to a judicial review of this decision. 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 Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

March 30, 2018