

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

**Neighborhood Market Inc,**

**Appellant,**

**v.**

**Case Number: C0211114**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Neighborhood Market (Neighborhood Market or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), 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(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 USC § 2021 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, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

In a letter dated August 23, 2018, the Retailer Operations Division charged 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 April 2018 through July 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 Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant did not reply to the charges. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated September 10, 2018. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter submitted on September 7, 2018, ownership appealed the Retailer Operations Division's determination and requested an administrative review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions 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.

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 2021(b)(3)(B) states, in part:

... 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, 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; . . .

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**, . . .” (emphasis added)

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.

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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. [Emphasis added.]

## SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from April 2018 through July 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions 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

In its September 7, 2018, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant is not a trafficker but instead is a community based entrepreneur trying to help its low-income neighbors eat better, save money, and get more bang for the buck.
- Appellant is a smokehouse/specialty meat market with a deli as well as a grocery market.
- Appellant purchases meat and product from licensed wholesalers to create its own products as well as retail there for profit.
- The majority of sales come for the meat market which have a wide variety that includes fresh meat, smoked meat, specialty meat, and deli cuts.
- Appellant provided a price chart that contained prices for fresh meat, smoked meats, specialty meats, and smoked specialty meats.
- Clients can buy retail or buy in bulk for discounts as well as allow them to order in bulk.
- Customers shop for weeks of meat at a time or a month.
- Appellant also sells grocery items such as milk, eggs, chips, soda, canned goods, produce, snacks, pies, candy, and cereal.
- Appellant sold live sacks of crawfish during crawfish season for \$60.00 to \$150.00 per sack.
- Appellant sells baked goods near the register which contribute to the weird numbers.
- Purchasing two types of meat specials and a cold water could run \$199.99, \$200.00, \$201.68, or \$299.99.
- Some customers make their order based on dollar amount such as \$25.00 worth of sausage.
- Appellant is working to put together full order forms for bigger purchases as well as detailed in-house logging on all orders so that at any time it can know exactly what was ordered and sold.
- Appellant provided photos of the meat display and meat scale.

- Employees will round down to the nearest whole number when weighing for clients and apply discounts when buying in bulk.
- Without EBT, Appellant would be letting down several new customers that depend on it and fresh products that we would hard to provide.
- Bulk smoked, fresh, and specialty meat are made and kept contained in coolers for larger purchases to be weighted, discounted, and sold upon order or demand.

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

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Neighborhood Market as a convenience store originally authorized on September 27, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 11, 2018, store visit 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 firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Neighborhood Market is approximately 2,400 square feet.
- The checkout area was small and limited in space.
- There were shopping baskets but no shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was some fresh meat products packaged for sale.
- The only fresh produce was a bag of onions.
- There were no dairy staple food items.
- Other staple foods available for purchase was, juice, rice, bread (5), beans, cereal (1), pasta, and canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included hot food, alcohol, tobacco, health and beauty products, cleaning products, and paper products.
- There were empty shelves and empty/broken coolers noted.

The four most expensive food items were beef steaks (\$9.49); a stuffed pork roast - \$8.89; and seasoned pork steak \$8.89 and \$8.18. SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items.

## Charge Letter Attachments

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.

**Charge Letter Attachment 1. There were an unusual number of transactions ending in a same cents value.** During the review period, there were 74 transactions ending in a same cents value that meet the parameters of this attachment. When such patterns are unsupported by special pricing structures, they are an indicator of trafficking in SNAP benefits.

It is possible that some of the smaller transactions are the result of purchasing some same cent items and this could explain some of the lower dollar same cent transactions. However, the larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these purchases would routinely total to an amount ending in same cents. The store visit report indicates that the store does not round up or down as alleged by the owner. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

**Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 22 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter 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 Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of forgotten items.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #2 were legitimate purchases of eligible food.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 117 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are also not consistent with the store's inventory. The

frequency of high-dollar purchases in a four-month period calls into question the legitimacy of these transactions. On the day of the store visit, Appellant did not have any dairy staple food items and did not meet even meet SNAP authorization criteria. A retailer is required to have at least three stocking units of three different varieties of each staple food category. Appellant had a limited stock of staple food on the day of the store visit. Appellant also did not have any fresh produce. There is no compelling reason for customers to consider Neighborhood Market as a first choice destination to fulfill large purchases of food.

Appellant explained that the majority of sales come for the meat market that includes fresh meat, smoked meat, specialty meat, and deli cuts. Appellant provided a price for fresh meat, smoked meats, specialty meats, and smoked specialty meats. Appellant also states that clients can buy retail or buy in bulk for discounts as well as allow them to order in bulk. The photographs and the report from the store visit does support that Appellant sold fresh and frozen meat items. Thus, it is likely that there would be some larger dollar transactions. However, there were no signs or evidence of any specials or bulk sales on the day of the store visit and Appellant did not submit such evidence.

The Retailer Operations Division requested invoices from Appellant to support its sales. Appellant submitted a total of 21 invoices. The Retailer Operations Division analyzed the invoices and determined that the invoices do not support the SNAP redemptions for the review period, even with a markup of 100%, which is unlikely. However, even if the invoices did show that the store purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day.

When a supermarket or super store is available, it is unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Appellant. The Retailer Operations Division determined that within a two-mile radius of Appellant there are six other authorized convenience stores, three small groceries, one medium grocery, two supermarkets, and one super store. Thus, households who shop at Appellant have access to and do shop at large grocery stores, supermarkets and super stores, among all other types of authorized stores.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Neighborhood Market compared to their shopping patterns at other SNAP authorized stores. However, despite this access to better stocked stores, each of the three households conducted excessively large transactions at Neighborhood Market within a short time of shopping at a supermarket or super store. For example, on June 13, 2018, one household conducted four transactions at Appellant **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar

type stores. 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 to legitimize 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.

## **Evidence**

The ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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, **evidence obtained through a transaction report under an electronic benefit transfer system . . . .**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

## **CIVIL MONEY PENALTY**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter



and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i), even though it was informed of the right to do so in the charge letter.

Even if a timely request had been submitted, Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

The Retailer Operations Division's analysis of Appellant's EBT 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. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owners 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, 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

April 5, 2019