

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

**Neighborhood Mini Pack Your One Stop  
Shop LLC,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0200516**

**FINAL AGENCY DECISION**

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

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Neighborhood Mini Pack Your One Stop Shop LLC by letter dated August 31, 2017.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 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 3, 2017, Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular

SNAP transaction patterns that occurred during the months of December 2016 through May 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The Appellant did not reply to the Charge letter. After giving consideration to the Appellant's failure to reply and evidence of the case, Retailer Operations Division issued a determination letter dated August 31, 2017. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 6, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

7 CFR § 278.6(a) states, in part that, "FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, 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.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

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

7 CFR § 278.6(b)(2)(ii) states, in part, that: “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, in part: “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 Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from December 2016 through May 2017. This involved the following transaction patterns which are trafficking indicators:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

The first issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the identified irregular and questionable transactions were the result of trafficking in SNAP benefits.

### **APPELLANT’S CONTENTIONS**

In its request for administrative review, Appellant made the following summarized contentions, in relevant part:

- Many of the customers are without transportation and access to other stores thus my customers repeatedly shop in order to provide for their families.
- I cannot limit the amount of purchases that are made during one business day yet alone during a week. The spending pattern of our customers is totally in the hands of the customers.

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

## **ANALYSIS AND FINDINGS**

The FNS authorized the business as a convenience store on June 6, 2016. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a November 1, 2016, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area approximately 1ft x 1ft, partially obstructed by other smaller items available for sale.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- Hot foods sold and for on-site consumption. Tables and chairs were available.
- A kitchen/prepared food area with hot foods sold for onsite consumption. Microwave available.
- Store has a deli or prepared food area with prices posted for meats and prepared/made to order sandwiches.
- Store sells meat/cheese by the pound but no price lists were available.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Estimated to be 600 square feet with food stored in storage area out of public view of approximately 15 square feet.
- Freezer/Coolers were outside with one in front of store. Meat was stored in an ice cooler.
- A refrigerator was stored under tent and one was stored in the back of the store room which also held meats and supplies. No differential between the meats used for hot foods versus that sold uncooked.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- Store is not a delivery route, farmers' market or specialty food store primarily selling one food type such as meat, poultry, seafood, bread, fruit or vegetables.
- Store stocks a marginal amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, health and beauty aids, cleaning products, and automotive products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit

- and vegetable products and meat, poultry and fish products.
- Some stock contained a layer of dust.
- Kitchen area is in an unsanitary condition.

The second issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Attachment 1 of the Charge letter - Multiple transactions were made from individual benefit accounts in unusually short time frames.**

This attachment lists 70 sets of 159 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The store visit report does not indicate any compelling reason for customers to consider Neighborhood Mini Pack Your One Stop Shop LLC a first choice destination to fulfill large purchases of food, or that they would have made relatively large, multiple purchases at the store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Appellant contends that it cannot limit the amount of purchases that are made during one business day yet alone during a week. The spending pattern of the customers is totally in the hands of the customers.

Regarding this contention, SNAP households have no limit on the number of times they may use their EBT cards; however, 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 the store's stock and facilities and are indicative of trafficking. The Appellant firm is a convenience store that does not compare in size and stock to the larger supermarkets and or super stores where SNAP households often shop. Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, the record reflects that there are at least nine (9) authorized SNAP retailers within one mile of Appellant that include three medium grocery stores, and six other convenience stores. Therefore, lack of access to other stores does not appear to be an explanation for the Appellant firm's abnormally high SNAP transaction amounts.

The Appellant contends that many of the customers are without transportation and access to other stores thus my customers repeatedly shop in order to provide for their families. Retailer Operations conducted an analysis of the shopping habits of five of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at

better stocked supermarkets/superstores in and around the East Baton Rouge County area of Louisiana. This is another strong trafficking indicator.

As an example it does not seem credible that:

- 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), a household would conduct a transaction at Appellant in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a household would conduct four (4) SNAP transactions at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C) then visit a super store and make a SNAP purchase in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C), when it would have been more logical to make such large purchases at the larger super stores which offered a much larger quantity and variety of eligible food items for likely better prices.

Additionally, when purchasing food, people generally do not spend large sums at convenience stores. They usually stop at convenience stores to pick up quick snacks and/or a beverage, or for a few staple food items that they need, such as bread, milk, eggs, or a can or two of some food, but which are not considered worth a trip to the supermarket to get. It is rare for a convenience store to have purchases such as those cited for this Attachment.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

### **Attachment 2 of the Charge letter - Excessively large purchase transactions were made from recipient accounts.**

This attachment lists 1211 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the results of the contracted store visit, these transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of excessively large purchases calls into question the legitimacy of these transactions.

The average convenience store transaction in the State of Louisiana during the review period was \$8.16 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 2 of the Charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Based on the above analysis, the Retailer Operations presented a convincing case that the Neighborhood Mini Pack Your One Stop Shop LLC trafficked in SNAP benefits which the

Appellant failed to adequately rebut. The attachments furnished with the charge letter identify the irregular patterns of SNAP transactions which indicate that trafficking was taking place at the firm during the review period. As there is more than one pattern of trafficking, a determination that the Appellant firm engaged in trafficking becomes more convincing.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

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

Retailer Operations has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns identified in the charge letter, the lack of food inventory necessary to support the firm's SNAP redemptions as observed and recorded during the onsite visit, the lack of purchase invoices of foods to cover SNAP redemption totals for the review months, the lack of adequate explanations for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

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

## **CIVIL MONEY PENALTY**

The Appellant did not timely 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 dated August 3, 2017. Even if a timely request had been submitted, the 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 SNAP compliance policy and program *prior* to the violations. Therefore, the Retailer Operations Division' decision, not to impose a trafficking CMP in lieu of disqualification, is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

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

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

Monique Brooks  
Administrative Review Officer

November 20, 2017