

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

**New Blondie Food 2 Corp,**

**Appellant,**

**v.**

**Case Number: C0210186**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the preponderance of the evidence supports that New Blondie Food 2 Corp. (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support that the permanent disqualification 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 the 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 the FNS.

**CASE CHRONOLOGY**

By Charge letter dated August 7, 2018, Retailer Operations informed the owner that USDA had compiled evidence that Appellant had violated the SNAP regulations. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was

charged with trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification. The owner, via counsel, replied to the Charge letter on August 16, 2018.

Retailer Operations issued a Determination letter dated August 29, 2018. This letter informed the owner that Appellant was permanently disqualified as a SNAP retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible because insufficient evidence was submitted to demonstrate that the owner had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated September 4, 2018, counsel requested review of the determination. The request for appeal was granted by letter dated September 17, 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 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 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 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 on review were based on an analysis of SNAP EBT data during the period of December 2017 through May 2018. This involved two Attachment patterns of EBT transaction characteristics that are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision consideration has been given to all contentions presented, including any not specifically referenced here.

- I ask the determination be reversed.
- The August 7, 2018 letter made no allegation that the firm lacked an effective compliance policy and program to prevent SNAP violations.
- It seems that since the USDA lacked sufficient evidence that the firm had been trafficking the USDA is now suggesting additional allegations in an attempt to disqualify the firm.
- The USDA makes this accusation of an ineffective compliance policy and program without having any evidence, documentation or information to corroborate its claim.
- All available evidence disproves the USDA’s claim that the firm lacked an effective compliance policy and program to prevent SNAP violations.
- The firm has had a comprehensive and ongoing compliance program focused on the prevention of SNAP violations. It includes a manual that is given to every employee, which explains SNAP rules and regulations and clarifies accepted and prohibited transactions using EBT cards. The program includes regular employee training on the proper use of EBT cards and redemption of SNAP benefits. The policy and program documents are enclosed. The policies and programs are very similar to the compliance policies and programs recommended by USDA.

- The owner and firm employees submitted affidavits that they had a policy in place and that the policy was implemented in the form of a SNAP compliance manual and regular employee training and supervision to ensure compliance. The USDA has nothing to suggest anything to the contrary.
- It is unfair and an abuse of discretion for USDA to disqualify the firm from the SNAP.
- All the employees denied providing ineligible items or cash as part of an EBT transaction.
- Three employees signed affidavits asserting they had not exchanged SNAP benefits for cash or ineligible items.
- Given the dates of the alleged improper transactions, the video surveillance had already been erased.
- The owner's training and the manual make it clear that any deviation from regulations will be grounds for termination.

## 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 107 transactions in 34 data sets of two or more transactions conducted by 19 different households. Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking.

Appellant contends that it is not unusual for customers to complete one transaction and later, which often equates to the following day, make another transaction.

The record supports that there are at least 25 authorized stores within a one mile radius of Appellant including three super stores and four supermarkets that stock comparable or greater staple foods at comparable or better prices. There are eight authorized retailers within a .25 mile radius of Appellant, five convenience stores, one medium grocery store, one small grocery store and one supermarket. The data supports that SNAP recipients that transacted benefits at Appellant also conducted transactions at large groceries, supermarkets and super stores. Of the households flagged on this Attachment, 63% transacted benefits at one or more of the larger store types listed within one day, and 74% made transactions at larger stores within two days of making a transaction(s) at Appellant. Given the access to larger authorized stores, Retailer Operations questioned the legitimacy of transactions at this convenience store.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The owner provided no itemized cash register tapes to support the legitimacy of the purchase of eligible foods Appellant. No recipient statements were advanced to support the shopping pattern claimed by the owner. No business bank records were provided. No federal or state business tax filings were advanced. No vendor invoices to support the acquisition of eligible food

inventories were provided. Insufficient evidence was advanced to meet Appellant's burden to support its contentions.

**Attachment 2:** Listed are 150 individual EBT transactions conducted by 60 households that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The data shows that Appellant's SNAP dollar volume for the review months was 66.6% higher than stores of the same store type in the same state and 19.5% higher than in Kings County. Appellant's average SNAP dollar transaction amount was 39% higher than the state average and 24% higher than the average SNAP transaction amount in the county. This is irregular.

The store photos support that the firm is mostly stocked with canned goods, deli meats and cheeses, packaged staple food items and snack/accessory items. Appellant does not appear to offer specials, promotions or incentives, nor carry any specialty, bulk, or high priced eligible food items. Appellant stocks ineligible items such as alcohol, hot foods, health and beauty aids, pet foods and pet products, paper goods, cleaning products, and miscellaneous items. The checkout area appears to have a small counter space with one cash register, no optical scanner, and no shopping baskets or carts to assemble food and other purchases. Appellant provided 14 copies of photographs that are similar to the photos taken during the onsite store visit of June 19, 2018. A majority of the photos advanced appear to be of carbonated and non-carbonated drinks, deli meats and cheeses, hot food items and cold prepared foods, alcohol, household goods, canned goods, packaged staple foods, snacks, and accessory food items.

Appellant claims that the transactions cited as unusual are typical and legitimate transactions that show legitimate purchases during a six-month period. The employees deny the allegation of trafficking and that without an actual individual or some other direct evidence to support the allegation, it is inappropriate. Counsel maintains that no evidence of employees engaging in exchanging benefits for cash or ineligible items was presented by USDA.

The regulations allow for disqualification of a retail food store on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system. 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.

In appeal of this matter, 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. Regarding the owner's denial of the trafficking allegations, this review encompasses the examination of the documentation and data in the record to determine whether Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. Assertions that the firm has not violated program regulations, without a preponderance of supporting evidence, do not constitute valid grounds for dismissal of the current charges of violations.

## **CIVIL MONEY PENALTY**

7 CFR § 278.6(i) specifies the criteria for a store's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty.

Retailer Operations reviewed the owner's affidavit which stated that she provides regular training to all of the employees; as part of the training she provides a manual and makes it clear that the SNAP program prohibits the exchange of SNAP benefits for either cash or ineligible items. The three page compliance policy submitted for review is not dated. Retailer Operations found that no store manual was provided even though it was said to have been attached.

Three employees signed affidavits that they were trained. Two employees affirmed they received the manual which explains the SNAP rules and regulations when they started working at the store, both statements are dated September 24, 2016. Retailer Operations cannot confirm the truthfulness of the affidavits and the veracity of the statements are questionable since Appellant was not authorized as a SNAP retailer until July 31, 2017. Retailers are not sent the USDA training guide for SNAP retailers until after they are authorized. It is unlikely that store employees would have been trained on or had received a SNAP manual about ten months prior to the store even being authorized to participate in the SNAP. The Bill of Sale in the record indicates that the store was sold on September 29, 2016, just three days after the employee's dated their affidavits. The Bill of Sale was signed and dated by the owner on October 4, 2016. It seems dubious that Appellant's policy and procedures regarding the handling of SNAP benefits were implemented prior to the store being purchased and/or authorized.

Retailer Operations also found that no copies of dated and signed training materials were presented. As such, there is no evidence to support the owner's claims that SNAP training was conducted or any corroborating evidence to support the employee statements provided. Appellant did not provide substantial credible evidence that it met all of the regulatory criteria for a trafficking CMP in lieu of permanent disqualification. Accordingly, Retailer Operations determined that Appellant did not qualify for a trafficking civil money penalty.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. Appellant's data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

The contentions offered by the owner for the transaction patterns were not persuasive by a preponderance of the evidence. No recipient affidavits were advanced to support the shopping patterns claimed. No federal or state sale tax submissions were advanced. No itemized cash register tapes were provided. No vendor invoices of acquired eligible stock were provided. No business banking statements were provided.

The record includes suspicious household shopping patterns, an onsite visit report, photographs, and analysis of the transaction data in the Attachments. By a preponderance of evidence, a conclusion can be drawn, that the unusual, irregular, and inexplicable transaction patterns cited in the letter of charges evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

### **RIGHTS AND REMEDIES**

Your 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 the applicable rights to judicial review of the determination. Please note that if 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 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

October 19, 2018