

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

**Chandulal Inc d/b/a Ninnekah Quick
Mart,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0201517

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 a **Permanent Disqualification** from participation as an authorized retailer in the Supplemental Nutrition Assistance Program¹ was properly imposed against Chandulal Inc d/b/a Ninnekah Quick Mart (hereinafter “Ninnekah Quick Mart” and/or “Appellant”) and its owners/corporate officers of record, by the Retailer Operations Division of the FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against Ninnekah Quick Mart in a letter dated August 23, 2017.

AUTHORITY

7 U.S.C. 2023 and its 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.

¹ Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

CASE CHRONOLOGY

In a letter dated July 31, 2017, the Retailer Operations Division informed Appellant that it was being charged with violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

The Retailer Operations Division record indicates Appellant responded, through one (1) of its owners/corporate officers and through counsel, both verbally and in writing; and, that those responses were duly considered by the Retailer Operations Division. Following that due consideration to the letter of charges, the Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated August 23, 2017, documented to have been delivered to Appellant on August 24, 2017.

The determination letter also stated that the Retailer Operations Division 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 Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not timely submit any evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 1, 2017, received in the offices of the Administrative Review Branch on September 5, 2017, Appellant, through counsel, submitted an appeal of the Retailer Operations Division’s assessment, requesting an administrative review of the action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)², 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of the

² Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246.

Code of Federal Regulations (CFR),³ part 278. In particular 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.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... 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 § 278.6(e)(1)(i) states, *inter alia*:

“FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

7 CFR § 271.2(1) defines trafficking, *inter alia*:

“ ... the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits ... for cash or consideration other than eligible food either directly, indirectly, in complicity or collusion with others, or acting alone:...”

7 CFR § 271.2 states, *inter alia*:

“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 § 278.6(a) states, *inter alia*:

*“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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(c) states, *inter alia*:

“Review of evidence. 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...”

³ Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

7 CFR § 278.6(b)(2)(ii), states, *inter alia*:

*“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).**”* [Emphasis added]

7 CFR § 278.6(i), states, *inter alia*:

*“FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in §271.2 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.”* [Emphasis added]

SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated July 31, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the six (6) month period of January 2017 through June 2017 and involved two (2) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #2 lists excessively large purchase transactions made from the accounts of SNAP recipients.

APPELLANT’S CONTENTIONS

In the letter dated September 1, 2017, counsel, on behalf of Appellant, requested reversal of the determination indicating that the owners are willing to give special effort toward seeing to it that SNAP is properly administered. Further counsel provides that:

- Appellant is a small store that does not have the proper cash register;
- Upon review of the materials appended to the letter of charges it became “clear than an employee participated in the improper use of a SNAP card”. This finding was based on the determination that all transactions occurred during the same work hours by the same employee. The employee is noted to have voluntarily left Appellant’s employ on August 15, 2017.

- The owners have not benefitted from any wrongdoing and were completely unaware of any wrongdoing until receipt of the letter of charges dated July 31, 2017.
- Appellant is located in a small community where a significant percentage of residents are designated as low income. Appellant is important to those who need nutritional assistance because the nearest alternative SNAP authorized firm is in the range of 10 miles away.

The preceding represents only a brief summary of Appellant's contentions 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 herein.

ANALYSIS AND FINDINGS

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

With regards to Appellant's contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

Appellant Operations:

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on July 1, 2017. The July 1, 2017 visit was authorized by a self-identified "manager" and resulted in materials reflecting observations made and responses received from the manager during the store visit which describe the nature and scope of Appellant's operation, as well as the stock and facilities.

The record indicates that Appellant has been authorized in SNAP since November 2010; and, is reported to be open from 6AM until 10PM on Monday through Saturday; and, from 6AM until 9PM on Sunday. Appellant is reported to be operating out of a 1500 square foot stand-alone convenience store from where a gas station is also operated. (Photos below).



Photo #11 - Storefront



Photo #29 – Gas Station Pump

The store visit materials describe Ninnekah Quick Mart as a convenience store; operating with one (1) general use cash register that is not equipped with scanning technology; and, one (1) point-of-sale (POS) terminal. The checkout operation is seen in the certified store visit photographs to consist of two (2) spaces on a countertop. Each open area is flanked by merchandise displays; and, the one on the left with a POS device visible also includes a food warming and display machine. The area is all atop a candy display which is described as necessary to reach across to conduct transactions by the Retailer Operations Division.



Photo #24 – Checkout Counter Area



Photo #3 – Checkout Counter Area

The store visit materials document that there are no hand-held shopping baskets or shopping carts available to support the delivery of purchases to the counter/checkout area for the completion of merchandise price totaling and payment. There is no identifiable area for staging and packaging items presented for purchase.

Appellant's operation is documented in the store visit materials to include a kitchen, offering hot food for sale including items such as Chicken, Burrito, Corndogs, Eggrolls, and Crisпитos @ \$1.59 each; Pizza, Calzones, and Pizza pockets @ \$1.79 each; cheese sticks @ .50 each; and Wings @ .60 per piece.

Photo #14 – Clip of Posted Menu





Photo #17 – Refrigerated Foods for Hot Food Preparation

There is a deli case that has a few items such as one (1) dozen eggs; seven (7) pudding cups; four (4) cheese and nuts snacks; three (3) pre-packaged fruit cups; four (4) to six (6) Pizza lunch kits; one (1) unit of sliced American cheese; two (2) units of sliced Velveeta cheese; one (1) can of biscuits; two (2) or three packages of sausage; two (2) packages of franks; an open bottle of dressing; and a few items that could not be definitively identified from the official photograph.



Photo #27 – Deli Case

Storage space of approximately 300 square feet, located behind the wall refrigerators, is the only storage space identified in the store visit materials.

The inventory at the time of the July 1, 2017 store visit includes varieties in each of the four (4) staple food groups as follows:

- Four (4) varieties of dairy products with more than 20 units of novelty ice cream and milk; five (5) units of cheese; and two (2) units of sour cream/yogurt/dips.

Thirteen (13) varieties of fruits and vegetables with the majority (7) identified in units one (1) to three (3). The 100 percent juice is documented to consist of six (6) to 20 units; and the beans/nuts and tomato products show availability in 20 or more units each. There are no units of fresh/frozen or refrigerated fruits or vegetables.

- Eight (8) varieties of breads and cereals were identified consisting of three (3) loaves of bread, more than 20 units of cakes and muffins and snacks; four (4) units of breakfast cereals; two (2) units of rice; and, between six (6) and 20 units of pasta, corn meal/grits, and flour/baking mixes.
- Six (6) varieties of meat/poultry/fish staple foods are identified with four (4) units of pork (ham, bacon, sausage); one (1) dozen eggs; four (4) cans of fish; more than 20 units of meat jerky; and between six (6) and 20 units of canned and deli meats.

The four (4) items **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** listed in the store visit materials include three (3) brands of beef jerky priced at \$6.49, \$6.89 and \$10.99; and, a four-pack of red bull energy drink priced at \$6.99.

No fresh or frozen meats beyond deli meats; no frozen offerings such as boxes of chicken, individual prepared meals, pizza, or frozen fruits/vegetables were identified in the official store visit photographs.

Non-SNAP products and services offered at Appellant include gasoline, hot food, alcoholic beverages (beer), tobacco products, health and beauty aids, paper goods, cleaning products; automotive products, and an ATM.

Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated July 31, 2017 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS. The system does not make the final determination instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their development of an ultimate decision.

Attachment #1: Represents **multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes** and include 41 transactions; grouped in 11 sets; 5 U.S.C. § 552 (b)(6) & (b)(7)(C)s. T 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that completing multiple transactions within 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period is a method used by some stores to avoid high dollar transactions that cannot be supported and are indicative of trafficking.

The Retailer Operations Division indicates that Appellant operational materials and stock did not evidence any reason why SNAP customers would consider Appellant as a first choice food destination for large orders or multiple purchases. In the instant case there were two (2) households identified in Attachment #1 and it was found that each of those households also shopped at alternative SNAP authorized vendors during the same general period that they shopped at Appellant. The transactions recorded at those alternative retailers, often larger better stocked firms, by those same households demonstrated shopping that did not generally include multiple purchases in short time frames. This finding brings into question the transactions at Appellant firm.

Attachment #2: Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 76 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division indicates that the average convenience store transaction in the State of Oklahoma in the focus period was \$6.30.

Appellant Responses:

Appellant did not respond to the July 31, 2017 until requesting administrative review, through counsel, where it is stated that upon review of the materials appended to the letter of charges it became “clear than an employee participated in the improper use of a SNAP card”. This finding was based on the determination that all transactions occurred during the same work hours by the same employee. The employee is noted to have voluntarily left Appellant’s employ on August 15, 2017.

Comparison/Competitor Store Information:

Retailer Operations Division documents that the subject firm is located in a rural area that is not well served by alternative SNAP authorized retailers. The closest competitor SNAP Authorized firm is identified as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), located 1.70 miles away, and recorded to be owned and operated by the same ownership as Ninnekah Quick Mart.

Comparison of the average number of transactions and the average transaction amounts for Ninnekah Quick Mart and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is summarized in Table I below.

5 U.S.C. § 552 (b)(7)(E)

Appellant information and materials do not explain why during the same period the instance of the type of suspicious transaction identified in the charge letter attachment is so different between Appellant and the nearest competitor convenience store.

Household Analysis:

An analysis was completed of the SNAP transactions of three (3) households identified in the attachment materials to the letter of charges. The analysis reveals that each of the households analyzed conducted numerous suspicious transactions at Appellant, clearly distinct from the patterns for the same households at alternative shopping venues as described by the Retailer Operations Division.

For example:

- The first household is documented to have completed 93 total SNAP transactions in the focus period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). None of the household's transactions at alternative firms was identified as suspicious in either of the patterns seen prominently at Appellant.
- The second household analyzed is documented to have completed 106 total SNAP transactions in the focus period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). None of the household's transactions at alternative firms was identified as suspicious in either of the patterns seen prominently at Appellant.
- The third household analyzed is documented to have completed 78 total SNAP transactions in the focus period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). None of the household's transactions at alternative firms was identified as suspicious in either of the patterns seen prominently at Appellant.

No Benefit to Ownership:

Appellant provides that the owners have not benefitted from any wrongdoing and were completely unaware of any wrongdoing until receipt of the letter of charges dated July 31, 2017. As previously noted on request for administrative review Appellant, through counsel, indicates that the responsible employee has left Appellant's employ. These contentions cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. Even if ownership was not involved, and did not benefit, ownership remains liable for all violative transactions handled by Appellant personnel. Regardless of whom Appellant's ownership may utilize to operate it, ownership remains accountable for the proper handling of

SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. In this case, the individual who committed the violations was not specifically identified. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2014 and the enforcement efforts of the USDA.

Civil Money Penalty

Part 278.6(f)(1) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to assessments thereunder: “A civil money penalty for hardship to Food Stamp [SNAP] households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case despite being Appellant’s location in a small community where a significant percentage of residents are designated as low income, even though it is needed to support nutritional assistance because the nearest alternative SNAP authorized firm is in the range of 10 miles away.

As previously indicated the August 23, 2017 determination letter advised Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The letter of charges dated July 31, 2017 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The record documents that no request for a civil money penalty in lieu of disqualification was made by Appellant, either verbally or in writing. Additionally no materials were provided for consideration that Appellant met the four criteria qualifying for the alternative sanction.

Therefore, on review the Retailer Operations Division’s determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division analysis of Appellant’s EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visit provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged and that the Retailer Operations Division has provided substantial evidence of trafficking violations.

Based on the discussion above, the decision to impose a permanent disqualification from participation in the SNAP against Ninnekah Quick Mart 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 a judicial review is desired, 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.

NANCY BACA-STEPAN
Administrative Review Officer

January 19, 2018