

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

One Food Stop Marketplace,

Appellant,

v.

-

Retailer Operations Division,

Respondent.

Case Number: C0207445

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of One Food Stop Marketplace as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against One Food Stop Marketplace.

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.”

CASE CHRONOLOGY

In a letter dated May 25, 2018, the 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 November 2017 through February 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns.

The letter also stated 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 charge letter was delivered via UPS on May 29, 2018.

The Appellant responded to the charges in a letter dated May 29, 2018 and denied trafficking in SNAP benefits, but stated that the store accepted SNAP benefits as repayment on credit accounts. The Retailer Operations Division replied in a letter dated June 7, 2018 that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of 7 CFR § 278.2(f). The letter requested documentation to support that food items were purchased on credit and stated this documentation must identify specific accounts along with corresponding dates and amounts.

The Appellant replied in a letter dated June 10, 2018 and stated that he did not realize that accepting SNAP benefits as repayment on credit accounts was a violation. The Appellant also provided various bank statements, merchant service reports, pages from what purports to be a credit ledger, EBT terminal receipts and cash register receipts to support its contentions. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 24, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i). The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the 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.

In a letter postmarked August 28, 2018, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review 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 action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7

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, 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 § 278.6(e)(1)(i) states:

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

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 § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

7 CFR § 278.6(a) states, in part:

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(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.

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 CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from November 2017 through February 2018. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 279 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that end in 00 cents. The largest single transaction amount reached 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 21 sets of 55 transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. The largest single transaction set reached a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 3:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 177 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction amounts ranged up to a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, and subsequent correspondence, in relevant part:

- The store is a legitimate business with legitimate transactions. It has strong credit card sales.
- Copies of SNAP sales showing itemized purchases are provided.

- The store is also submitting copies of purchase invoices for drinks and food for the month of November 2017.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. Please be assured, however, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized One Food Stop Marketplace for the SNAP on April 5, 2017. During the review period of November 2017 through February 2018, the Retailer Operations Division classified the store as a convenience store.

The owner signed the SNAP application for the store on February 16, 2017 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as **repayment on credit accounts** or in exchange for ineligible items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 7, 2018 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- One Food Stop Marketplace is approximately 3,500 square feet in size.
- The store did not have any shopping carts and had only seven (7) handheld shopping baskets for customer use.
- The store had one (1) cash register and two (2) point-of-sale devices for purchases.
- The store did not have an optical scanner or conveyor belts at the checkout.
- There was no storage area with food store out of view of the public. Store personnel also confirmed that no food was stored offsite.

- The store did not have a special pricing structure such as most items ending in even dollars. Instead, food items generally had typical retail prices ending in nine (9) cent amounts such as .49 and .99. Store personnel confirmed that the store did not round prices up or down at the checkout.
- The store did not sell items in bulk such as fresh meat bundles, fresh seafood specials, or large boxes of fresh produce. The store did not sell any specialty or international foods that would normally sell for a high price.
- The checkout area consisted of a small countertop and window opening surrounded by a Plexiglas barrier. The countertop had empty space of no more than two (2) feet by two (2) feet in size for stacking items to be purchased. The countertop was surrounded by displays of candy, snack foods and other items. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged dry goods with only a limited amount of fresh produce. The store also sold low cost accessory food items such as snack foods, ice cream, carbonated drinks, coffee, tea, condiments, and spices. The stocked ineligible items included lottery tickets, tobacco, alcohol, mobile phone accessories, automotive products, health and beauty products, paper goods, and cleaning products. The store also had a kitchen and food preparation area where SNAP ineligible hot, heated and cold food not intended for home preparation and consumption was sold. Store personnel confirmed that the most expensive items sold by the store were 10.5 ounces of Nescafe Classico Coffee at \$10.99; a gallon of Mazola oil at \$9.99, a 10-pound bag of rice at \$8.99; and a gallon of Mojo at \$6.49. However, the store did not have large quantities of these items that would explain large dollar transactions. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Credit Accounts

The Appellant claims that at least some of the transactions cited in the charge letter were repayments on credit accounts. As evidence, the Appellant provided copies of two (2) pages with a list of first names, some of which were crossed out, along with what appears to be dollar amounts and some scribbled calculations.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The two-page document that was submitted does not meet these requirements as there is no SNAP recipient-identifiable information and the documents do not indicate what items were

purchased on credit, when the items were purchased, when the account was paid off, or whether it was paid off by cash, check, credit card or SNAP benefits. In conclusion, there is insufficient evidence to support the Appellant's claim that the transaction patterns cited in the charge letter were due to repayments of credit accounts with SNAP benefits.

Same Cent Transactions

Out of 1,631 SNAP transactions conducted during the review period, One Food Stop Marketplace conducted 743 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Out of these larger dollar transactions, a total of 279 transactions (37.5 percent) ended in 00 cents. In fact, the store's larger dollar transactions were more likely to end in even dollars than its transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. There is no evidence that the store had a special pricing policy that would cause a disproportionate number of higher dollar transactions to end in 00 cents. Store personnel also stated during the store visit that the firm did not round prices up or round prices down at the checkout.

The Appellant told the Retailer Operations Division that "two ham sandwiches and two drinks is 9.00 dollars, two pastrami sandwiches with drinks is 10.00, three sandwiches and drinks and three 1.69 bags of chips for 20.00." It should be noted that the items described by the Appellant include **SNAP ineligible** prepared made-to-order sandwiches. However, even if some purchases naturally could result in transactions ending in even dollar amounts, this would not explain all of the transactions cited in Charge Letter Attachment 1.

The Appellant provided some large dollar itemized purchase receipts that ended in 00 cents as evidence that the corresponding SNAP transactions were legitimate. However, the Retailer Operations Division determined that these alleged purchase receipts were suspicious because (1) they lacked the date and time of the purchase; (2) the purchase receipts stated that they were cash transactions; and (3) the purchase receipts identified the cashier as "Administrator." For these reasons, the Retailer Operations Division properly questioned whether these were legitimate cash register receipts or had been contrived to match the irregular transactions cited in the charge letter and the corresponding EBT terminal receipts.

Based on the store visit report, the Appellant store's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in total purchase prices ending in 00 cents. The store visit report documented that most items in the store had price amounts ending in nine (9) cents. When SNAP customers buy multiple food items ending in nine (9) cents, resulting in higher dollar amounts, the total transaction amount is more likely to result in a random statistical spread of ending cent ranges from 00 to 99 cents.

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. 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 a convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 2 lists 21 sets of 55 transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). In fact, this average SNAP transaction is larger than the average superstore SNAP transaction in Florida during the review period. It is not credible that a convenience store with limited staple foods would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

One particularly egregious set is shown in transactions 319-320-321-322. This set consists of four (4) transactions from a single household account with three (3) transactions ending in even dollar amounts (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant did not offer any credible explanation for this or any other transaction patterns cited in Charge Letter Attachment 2.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and only a few handheld baskets for customer use. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). 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 a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 3 cites 177 SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). Even the smallest transactions cited in the charge letter had an amount which is three (3) or four (4) times higher than the average SNAP purchase amount for a Miami-Dade County convenience store.

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that during the review period there were 24 SNAP authorized stores located within a one-mile radius of One Food Stop Marketplace. These included seven (7) other convenience stores, six (6) combination grocery stores, four (4) small grocery stores, a medium grocery store, three (3) supermarkets and three (3) superstores. The nearest supermarket was 0.25 miles away and the nearest superstore was 0.28 miles away. A government report¹ on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at One Food Stop Marketplace compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at, larger stores including supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at One Food Stop Marketplace on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a convenience store would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

Other Evidence Submitted by the Appellant

In addition to the documents previously mentioned, the Appellant also submitted copies of its bank statements, merchant service reports, EBT transaction receipts, and miscellaneous purchase invoices from November 2017. The Appellant stated that these documents were to demonstrate that the store operates a legitimate business. However, it is not unusual for violating firms to conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of

SNAP rules against trafficking. In the absence of a credible explanation for the irregular transaction patterns cited in the charge letter, the most likely explanation is that they are a result of the store trafficking in SNAP benefits.

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. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that “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 ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

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’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 the Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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 the absence of any reasonable explanations 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. 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 in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against One Food Stop Marketplace, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

October 30, 2018