

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

One Stop,

Appellant,

v.

Case Number: C0204208

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The record indicates that One Stop (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that here is sufficient evidence to support a finding that the permanent disqualification as an authorized retail food store in the SNAP, 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 its 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 FNS.

CASE CHRONOLOGY

By Charge letter dated December 18, 2017, Retailer Operations informed the owner that FNS had compiled evidence that Appellant had violated the SNAP regulations based on analysis of electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the type of firm. The sanction for trafficking is permanent disqualification.

The record supports that Appellant replied to the Charge letter December 21, 2017 and January 19, 2018. Retailer Operations issued its Determination letter February 16, 2018. This letter informed the owner that Appellant was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. 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. The firm was found not eligible for the CMP because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP per the regulations cited.

By letter dated February 28, 2018, the owner, via counsel, appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated March 12, 2018. The owner provided new information by cover letter dated April 6, 2018. Counsel did not provide requested retainer documentation; as such he was not provided this decision.

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 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 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). Parts 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 § 271.2 states: "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 § 278.2(f) states: "Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year."

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(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 at 7 CFR § 271.2 as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

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 April 2017 through September 2017. This involved two patterns of transactions indicative of trafficking:

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

APPELLANT’S CONTENTIONS

In reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated herein.

- To my knowledge, many of my clients receive large amounts of food benefits considering all the children they have. When they get their monthly benefits, they come to the business and buy a large amount of groceries because of the checkpoints police conduct checking driver’s licenses, etc., and the fact they don’t have a car or license to drive freely around town. So they get large amounts that they will need for the week or upcoming weeks.
- One specific client that is shown in the attachments never got her new card in the mail, so someone at the store would always have to manually enter her card number in the reader. She has been a good client for many years, and has 8 children. I spoke with her personally about getting a new card to avoid any more problems. She will usually buy

her groceries and she will only pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on her EBT card, and the rest she will pay in cash and change. We have a meat department and she purchases large quantities of meat for her family.

- My store is well known around the area for the quality of meat and the different cuts we provide. My business has been open for twenty years, and we have accumulated many customers throughout the years, making many and large transactions every day, and if needed I can provide information and evidence to prove this statement.
- My customers prefer my business over others because it is a family owned business and they are treated as such. Many have been clients for many years. They are willing to testify in court for anything if needed.
- I have many clients who live behind my business in an apartment complex called Nance Forest who have children and do not have any transportation so it is an inconvenience [sic] for them to walk over to my business and purchase groceries for themselves and their children.
- I am placing a new policy effective immediately to prove I am only selling unprepared food items. All purchases will be stapled with cash register receipts to prove for future references that I am not selling any illegal items under this program. Every employee will be demanded to obey by these rules.

The owner provided 20 notarized customer statements and four store photographs.

ANALYSIS AND FINDINGS

The evidence that Appellant violated the SNAP regulations is furnished with the Charge letter as Attachments. Government analyses of stores caught in trafficking violations during actual on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges. SNAP transaction data is provided to FNS via each state's EBT processor on a daily basis in a single layout and format that is standardized nationwide. The transactions are validated and loaded into a database for subsequent analysis. A USDA system scans all retailer SNAP transactions at the beginning of each month for the prior month. The system uses pre-defined criteria or patterns for potential fraud detection. Formatted reports provide information on those authorized stores and transactions meeting the pre-established criteria. The system provides a series of spreadsheets and graphs that compare a specific store's data to the average for its firm type or to user-selected comparison stores. The system enables the user to map the locations of selected authorized stores and track transaction locations of recipients. Retailer Operations staff use the analysis of SNAP transaction data to evaluate the type and extent of potential program violations.

Attachment 1: Listed are 48 transactions in 21 sets of two or more transactions, conducted by 13 different households (HHs). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One household conducted 14 transactions listed, all manual.

The record supports that within a three mile radius of Appellant there are there are four authorized retailers to include one small grocery store, two supermarkets, and one super store.

Additionally there are eight combination grocery stores and ten convenience stores. On the same day of a transaction at Appellant, 69% of the HHs flagged made a SNAP transaction at a large grocery, supermarket or super store. Within one day of conducting a transaction at Appellant, 85% of the HHs made a SNAP transaction at a large grocery, supermarket or super store. This supports that there is no lack of authorized store options for recipients to purchase SNAP eligible foods. Given the shopping options for recipients in this area, it seems irregular that multiple SNAP expenditures for eligible foods were made in short periods at Appellant.

The owner provided 20 recipient affidavits in support of her contentions regarding beneficiary purchases at Appellant. The affiants attested that they bought only food from the store, that it was inconvenient to go elsewhere, and that they were clients for many years. Retailer Operations conducted a systems search for the 20 households and no results were found for two customers who provided statements. Of the remaining 18 customers, all shopped at Appellant during the review period, but only nine recipients had transactions listed in the Attachments. Therefore, the notarized statements conflict with actual SNAP activity at the store and their veracity is questionable. Seventeen of the 18 HHs frequented super stores, supermarkets, and other grocery stores during the review period. On average, these HHs shopped at 11 different stores, including supermarkets and super stores, and traveled up to thirty miles from Appellant to shop at various authorized stores. Most of these households reside more than two miles from Appellant and would appear not to have transportation challenges. The 18 households conducted a total of 248 transactions at Appellant with an average transaction amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A total of 796 transactions were conducted by 17 households at supermarkets and super stores with an average transaction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual.

The photos provided show customers who have EBT cards making purchases. The photos do not provide an explanation for the transactions listed in the Attachments. The owner did not provide itemized cash register tapes to support the sale of SNAP eligible foods, or vendor documentation to support that SNAP eligible foods were acquired in amounts to cover the SNAP redemptions at Appellant for the review months. No price list of eligible items was advanced. No store flyers or advertisements were provided. Appellant provided no federal or sales tax records, and business bank records to support that trafficking did not occur were not advanced. Thus, the transactions have not been demonstrated by a preponderance of the evidence to be for eligible SNAP foods.

Attachment 2: Listed are 63 transactions made by 28 households that are at least three times higher than the average SNAP transaction amount for this store type in this state. The record supports that 68% of the households flagged on this Attachment completed a SNAP transaction at a large grocery, supermarket or super store within one day of conducting a transaction at Appellant, and 79% of households flagged completed a transaction at a those larger store types within two days of a flagged transaction at Appellant. During the review period the data shows that there were 21 households that conducted a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

Retailer Operations made a comparison of number and amounts of transactions after receipt of the Charge letter on December 19, 2017, and found a suspicious drop in high dollar transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such decreases in redemption numbers and transaction amounts often indicate a firm becoming cautious and ceasing violative trafficking.

The record shows that in 2012 Appellant was previously sanctioned by FNS for selling ineligible items during an onsite investigation. The October 2017 store visit confirms that Appellant carries a significant non-food inventory including an extensive hot food menu, tobacco, household supplies, paper products and health and beauty aids. There is a restaurant with a menu of food items, a large prep kitchen, and table and chairs for onsite dining. The only frozen foods were ice cream treats. Appellant has no shopping carts, only five shopping baskets, and does not offer delivery service. The small counter area was cluttered with various displays hindering the processing of large dollar totals.

The record supports that households conducting large dollar transactions at Appellant had suspicious shopping histories. For example, one HH had a stated address located approximately 23 miles from the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This household transacted benefits at 14 different stores, including a similarly stocked international store located 0.58 miles from its residence. This household lived closer to similar or better stocked firms, and Retailer Operations found it suspicious that the HH would drive more 20 miles and transact 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of SNAP benefits at Appellant in one swipe.

Appellant was provided an opportunity to respond to the Charge letter and to provide evidence that the unusual transactions were eligible SNAP food sales. All documentation provided to Retailer Operations is reviewed and considered prior to issuance of a Determination letter. Appellant was provided an opportunity to provide additional information under review. Appellant did advance some contentions however; insufficient evidence was advanced to support these arguments. Based on the transaction data in the Attachments, an onsite store visit and inventory report, recipient transaction analyses, and consideration of the owner's responses to the charges, Retailer Operations permanent disqualification of Appellant is sustained.

SNAP authorization is an administrative privilege, granted upon proof of eligibility and continued proof of compliance with the governing laws and regulations. When a firm is granted authorization to participate in SNAP, this is not an unencumbered right or entitlement. The agency labors to diligently operate SNAP in accord with the statute enacted by Congress and the regulations promulgated to implement the provisions thereof. While due process is honored, it is Appellant's burden to demonstrate that it has not engaged in SNAP benefit trafficking by presenting a preponderance of evidence of same. A store owner who seeks to set aside an agency sanction action must focus its probative efforts on providing evidence by a preponderance that the transaction activity at issue is in fact not due to SNAP benefit trafficking. Since permanent disqualification is warranted on the first occasion of trafficking, it is Appellant's burden to raise material issues of fact as to the transactions set forth as suspicious by Retailer Operations in its Charge letter. This burden has not been met.

CIVIL MONEY PENALTY

To be considered eligible for a CMP in lieu of permanent disqualification for trafficking, a firm must establish, by substantial evidence its fulfillment of the criteria as listed at 7 CFR § 278.6(i). Appellant produced no evidence that met the requirements to qualify for a trafficking CMP in lieu of permanent disqualification within the regulatory time frame.

CONCLUSION

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Retailer Operations used computer printouts of transaction data and other data reports, an onsite store visit report and inventory and an analysis of household shopping behavior in rendering a finding that violations indicative of trafficking occurred at Appellant. The record also supports that Appellant has a recorded USDA violation based on an onsite investigation that resulted in a hardship civil money penalty assessment. The evidence by a preponderance supports that it is more likely true than not true that program violations did occur at Appellant. Thus, the decision to impose a permanent disqualification against Appellant is sustained. Appellant did not provide any documentation as required by the regulations for consideration for a trafficking CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008, and Section 279.7 of the regulations (7 CFR § 279.7) discuss the applicable rights to a judicial review of this determination. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's 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

April 24, 2018