

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

One Stop Shop N-Go Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0200399

FINAL AGENCY DECISION

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

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated August 2, 2017.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated July 6, 2017, Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of November 2016 through April 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided

by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant did not reply to the charge letter. After giving consideration to the Appellant's non-reply and evidence of the case, Retailer Operations Division issued a Determination letter dated August 2, 2017. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that 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. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked August 9, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW

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

7 CFR § 278.6(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 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) reads, in part, "*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. In the case of a firm subject to

permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

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

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of November 2016 through April 2017. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. An unusual number of transactions ended in a same cents value.
2. Multiple transactions were made from individual benefit accounts in usually short time frames.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

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.

APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

- I have read over the regulations in the attached link and have address all of the section including training guides and video; all of the employees and myself have watched the training video in the past but all of us have re-watched the video today as a refresher and reviewed the guides. I have obtained new retail SNAP posters and decals and placed them on the windows.

In subsequent correspondence dated September 7, 2017, Appellant provided the following:

- 4 pages of color photographs of the store stock.
- 107 pages of copies of bank checks.
- Copies of April 2017, May 2017, June 2017 and July 2017 Sales Tax Returns.

- 192 purchase invoices.

Of the 192 purchase invoices provided, one was a duplicate and 107 were dated outside of the review period and therefore not considered during this review.

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

ANALYSIS AND FINDINGS

The FNS authorized the business as a medium grocery store on November 17, 2010. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 15, 2017, store visit to the business conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions, at Appellant, that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Three cash registers and one POS device available at checkout. The counter area next to each register is partially obstructed by smaller items for sale and does not provide enough space for large amounts of food items.
- Six shopping hand-baskets available and two shopping carts available for customers.
- No adding machines but optical scanners were available at checkout. One specialty register present.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No kitchen/prepared food area.
- Hot foods sold but none for onsite consumption.
- Store has a deli or prepared food area with prices posted for meats/cheeses. Store stock not used in the deli/prepared food section.
- Store sells meat/cheese by the pound but no price lists were available.
- Store sells meat specials or bundles and meat by the pound.
- Fresh fish available but no indication it's sold in specials. No fruit/vegetable boxes sold.
- Estimated to be 9,400 square feet with no food stored in storage area out of public view approximately.
- No food stored off site and no storage coolers or freezers.
- Store does not take telephone or online orders and does not offer delivery.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- Store is not a delivery route, farmers' market or specialty food store primarily selling one food type such as meat, poultry, seafood, bread, fruit or vegetables.

- Photographs of signs posted show the highest priced items were meat bundles priced **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**5.
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, housewares, health and beauty aids, automotive products, cleaning products, alcohol products and lottery tickets.
- Store stocks ample amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
- The store consists of two adjoining rooms. Hot foods and a fresh meat market/fresh deli meats and cheese.
- Many canned goods contained a layer of dust.

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

Attachment 1 of the Charge Letter – An unusual number of transactions ending in a same cents value.

This attachment lists 1,208 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.

During the review period, Appellant conducted 14,075 EBT transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When there are a disproportionate amount of transactions ending in same cent value it appears the transactions are contrived and absent any compelling rationale to the contrary it is a strong indicator of trafficking. Especially when many of the stores food item prices, including deli meats/cheeses and fresh meat by the pound, ended with a standard .x9, it is implausible that several of these relatively inexpensive items purchased together would routinely total to a purchase amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In addition a store that is rounding prices up or down or an even value would not have any transactions ending in odd values.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 1 of the Charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

During the review period, this attachment documents 420 sets of 939 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is important to note that SNAP households have no limit on the number of times they may use their EBT cards; however, the SNAP transactions noted in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking.

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

Attachment 3 of the Charge Letter - The majority or all of an individual recipient benefits were exhausted in unusually short periods of time.

This attachment lists 232 sets of 395 transactions conducted by 175 households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits in which individual recipient benefits were exhausted or nearly exhausted. Studies of historical transaction data shows that SNAP recipients do not normally exhaust their benefits in one or two transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. A government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or in a single day. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP benefit households.

Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 3 of the Charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 4 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

This attachment lists 2047 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar

¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011

purchases calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant provided, with its review request, four pages of color photographs of the store stock, 107 pages of copies of bank checks, copies of its April 2017, May 2017, June 2017 and July 2017 Sales Tax Returns, and 192 purchase invoices covering the review period. Upon review of the purchase invoices, it was determined that one invoice was a duplicate and 107 invoices were dated outside of the review period and therefore not considered during this review. All other receipts were considered during this review. Based on an analysis of the eligible receipts and as seen in the table below, it was determined that Appellant's purchases for the review period were insufficient to substantiate the transactions as well as its total SNAP redemptions for the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Retailer Operations also conducted an analysis of the shopping habits of four of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Cook County area of Illinois. This is another strong trafficking indicator.

Summary

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Appellant did not respond to the charge letter and did not provide any explanation or related evidence in an attempt to clarify or justify the specific transactions behaviors noted in the charge letter Attachments. It is therefore determined, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter Attachments.

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

demonstrated, the case is to be sustained.

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

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in four attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other medium grocery stores in the State.

Therefore, based on this empirical data, and in the absence of evidence for the legitimacy for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's non response to the charge letter did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated July 6, 2017, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore,

Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

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

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

RIGHTS AND REMEDIES

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

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

Monique Brooks
Administrative Review Officer

November 7, 2017