

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

Patapsco Food Market,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0222028

FINAL AGENCY DECISION

It is the decision of the USDA that there is not sufficient evidence to support a finding that Patapsco Food Market (Appellant), should be permanently disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for trafficking. The permanent disqualification determination by the Office of Retailer Operations and Compliance (Retailer Operations) is hereby reversed.

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 the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated October 8, 2019, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

The record supports that Appellant replied in writing to the Charge letter on October 24, 2019. Retailer Operations issued its Determination letter dated December 2, 2019, that 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 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 regulations. It deemed the firm was not eligible for a 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.

The owner requested administrative review by letter dated December 9, 2019. The appeal was granted by letter dated December 19, 2019. The owner provided additional information dated January 2, 2020. Retailer Operations provided its assessment of the new information April 3, 2020.

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, credible evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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

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

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

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

7 CFR § 278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transaction patterns were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of March 2019 through August 2019.

The patterns of transaction characteristics indicative of trafficking were:

- Multiple transactions were made from the accounts of individual SNAP households within a set time period.
- The store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

Attention has been given to all contentions presented in rendering this decision, even those that may not be listed.

- We have a computerized POS system. I am not computer literate. I am working with support to retrieve missing invoices.
- Our store is serving a food desert area. There are no mega/giant stores or national chains that serve this area.
- Our store is about 4,000 feet with about more than 24 walk/cooler/freezers.
- We carry a sizable inventory **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** on a daily basis. We attached invoices to give you an idea of our purchase volume. You can check video record.
- It has been our consistent sales promotion policy to give away 2-liter soda bottles for every purchase of \$20 or more to improve our sales. The disadvantage is the customers break up their purchase into invoices of \$20 or more. Hence, they qualify for more soda bottles.
- I have provided proof to show that nothing done was wrong at my store. We didn’t commit any fraud using food stamps. Not even a single penny charged of fraud.
- This is a misunderstanding because we couldn’t understand everything. If you need more evidence I will do my best. I assure you there is no snap trafficking.

- My sales went down I won't be able to pay store rent.
- I'm woman running my business. I would never do something wrong to shutdown my business.
- I have frozen food 5 U.S.C. § 552 (b)(6) & (b)(7)(C). I have copies of receipts which shows snap. It is all grocery items allowed.
- I was asked to send proof I had receipt of sales, I sent everything I had. I might have missed 2 or 3 but that was accidental. After speaking to the USDA representative, I thought she said everything was fine. After a few days the food stamps was stopped. So I requested to send again which I am sending right with this letter.
- I have not committed any fraud. You can monitor my store.
- You can ask any person who shops here, nothing was done against the law. I'm a new owner, still learning, I didn't know that the same person can't use their card more than once a day. I can take an oath that food stamps were used only for customer groceries.
- Customers buy groceries more than once a day. We buy so many groceries from big stores 5 U.S.C. § 552 (b)(6) & (b)(7)(C). We have a lot of groceries because a lot of people buy from the store. The business is to pay bills, not for saving any money.
- Check how much profit we made, it is not something that can make you suspect. We didn't do anything against the law. We didn't do food stamp trafficking. I have been in the US since 1996, never committed any fraud. I had food stamps before, never used it the wrong way. I believe in Islam that says not to make money by committing fraud. I'm a very honest person.
- I have frozen food sitting in the freezer that no one can afford to buy because it's a poor people area. Everybody buys food on food stamps. Our food is expiring, please help me.
- If I had committed fraud I wouldn't be writing this letter. I would know I can't hide. You can check everything I am sending, I will send anything else you ask. We have sent all the receipts before and now again, if you can send them back for tax filing reasons please do so.
- I have sent pictures before. Our customers said they can write letters, I am sending letters as witnesses. I'm also sending that they say they can sign.

APPELLANT'S EVIDENCE

- More than 300 original, detailed cash register receipts.
- Hundreds of original vendor receipts for the review period, and months prior/post review.
- Photos of food stock.
- More than one thousands pages of store records were submitted for review, including customer statements.

ANALYSIS AND FINDINGS

The primary issue for consideration in this case is whether or not Retailer Operations established by a preponderance of the evidence, that Appellant engaged in trafficking which warrants a permanent disqualification. There is no way for this review to definitively conclude that trafficking did not, at any point, occur at the firm. In light of the assessment of the evidence in

the record, this reviewer finds that there are other legitimate explanations, besides trafficking, that could account for the transaction patterns at Appellant.

Please contact Luz Pena at (213) 330-2447 regarding reinstatement and operations questions.

CONCLUSION

It is the determination of this review that the Appellant has met the burden of supporting, by a preponderance of the evidence, that the transaction patterns listed in the Charge letter were more likely than not, the result of allowable SNAP purchases of eligible foods. Therefore, the determination to impose a permanent disqualification against Appellant for trafficking is herein reversed.

RELEASE OF INFORMATION

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 8, 2020