

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

Paulinos Food Corp Inc.,

Appellant,

v.

Case Number: C0210617

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Paulinos Food Corp 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(a) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Paulinos Food Corp Inc. by letter dated September 20, 2018.

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 August 8, 2018, 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 January 2018 through June 2018. 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).

In an email dated August 15, 2018, Appellant replied to the charge letter and apologized for any misrepresentation of ownership that the transactions might have imposed. Appellant stated that the business is located across from an elder building with over 200 residents that are low income with most being incapacitated. The transactions are from people that do not buy products constantly throughout the month. The buyers are more used to purchasing once or twice a month. In a subsequent email dated September 5, 2018, Appellant provided 19 color photographs of what appeared to be bulk priced items of coffee, cooking oil, soda, water, rice, ramen noodles and Similac.

After considering the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated September 20, 2018. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that 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. However, Retailer Operations Division determined that Appellant was not eligible for the CMP. Appellant failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated September 21, 2018, postmarked September 25, 2018, 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) 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, in part 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 1977, 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(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.”

7 CFR § 278.6(b)(2)(ii) states, in part, that: “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, 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.”

SUMMARY OF THE CHARGES

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

1. Multiple transactions were made from the accounts of individual SNAP households within a set time-period.
2. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
3. Excessively large purchase transactions were made from recipient accounts.

The first issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the identified irregular and questionable transactions were the result of trafficking in SNAP benefits.

APPELLANT’S CONTENTIONS

In its response to the charge letter and in its request for administrative review, Appellant made the following summarized contentions, in relevant part:

1. I started taking actions in telling customers they have to make smaller purchases and get products as they are consumed, because the amounts of purchases are reflecting a negative view of my ethics and business management with SNAP. I have no control on the timing and amounts of purchases of individuals in my store.
2. I have supplied pictures requested of my inventory.

Appellant did not provide any additional information or documentation. 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 small grocery store on December 14, 2017. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a July 2, 2018, store visit to the business conducted by a 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 firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale. The counter area was approximately 1.5 x 2.0 sq. ft.
- Estimated to be approximately 600 square feet.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No food stored in an area outside of public view
- No storage freezers or coolers and not food stored off site.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Red bull (\$59.99/case), Nido (\$25.99), Cooking Oil (\$24.99) and Formula (\$19.99).
- Store stocks a significant amount of non-food items such as but not limited to paper goods, cleaning products, tobacco products, mobile phones, health and beauty aids.
- Store stocks minimal amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Minimal fresh produce, no fresh meat, seafood or poultry. Most meats are canned, packaged or frozen.
- No kitchen/prepared food area with hot foods sold for onsite consumption.
- No hot food sold.
- No deli or prepared food section. Stock not used in preparation of food.
- No meat or seafood specials, bundles or fruit/vegetable boxes sold.
- Store's aisles were very narrow with tall shelves.

The second 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 Appellant's store 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 - Multiple transactions were made from individual benefit accounts in unusually short time frames.

There were 52 sets of 118 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. The SNAP transactions listed in the charge letter are questionable and therefore suspicious because they are multiple large dollar transactions being conducted by a specific household in a short period at a small grocery store with very limited staple food stock.

With regard to Appellant's contentions, the store inventory consists of frozen processed foods, frozen foods, some fresh produce, canned foods, packaged goods, beverages and snack foods. The store has no carts and no baskets to transport large amount of goods to the checkout counter. The available checkout area space is approximately 1.5 x 2.0 sq. ft. Appellant's available stock and store characteristics make it questionable that a household would visit Appellant's store on 1/19/18 and then again on 1/21/18 and in four transactions expend **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits and it consisted entirely of SNAP eligible food items. Especially when the first two transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, were **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** households shopped at other larger better-stocked with seemingly better pricing supermarkets and superstores, either on the same day or within a day or two of visiting Appellant's store.

Retailer Operations conducted an analysis the households, listed in the charge letter, during the review period. It was determined that 67 percent of them used an area large grocery store, supermarket or superstore, 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 Worcester County area of Massachusetts. This is another strong trafficking indicator.

The photos provided by Appellant appeared staged to show more inventory items. The store visit dated July 2, 2018, does not show any evidence of a large inventory of 2-liter sodas, 20 lb. bags of rice, and cases of 2.5 gallon Mazola Oil, bottled water or Similac Baby Formula. The store visit reports that there is no storage area out of public view and food is not stored offsite. Moreover, if the transactions listed in the charge letter were typical SNAP transactions at Appellant's store and showed the normal shopping habits of households, then there would not

have been a 45% drop in dollar volume and a 44% drop in total questionable transactions after delivery of the charge letter on August 9, 201. Appellant's transaction pattern would have remained constant.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge letter – The majority or all of individual recipient benefits were exhausted in unusually short periods of time.

There were 71 sets of 115 SNAP transactions that met the parameters of this attachment 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 on the same day. 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 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 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 - Excessively large purchase transactions were made from recipient accounts.

There were 236 SNAP transactions that met the parameters of this attachment. 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 purchases calls into question the legitimacy of these transactions. 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 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.

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

Based on the above analysis, the Retailer Operations Division presented a convincing case that Paulinos Food Corp Inc. trafficked in SNAP benefits, which the Appellant failed to adequately rebut. The attachments furnished with the charge letter identify the irregular patterns of SNAP transactions, which indicate that trafficking was taking place at the firm during the review period. As there is more than one pattern of trafficking, a determination that the Appellant firm engaged in trafficking becomes more convincing.

Conclusion

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 has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns identified in the charge letter, the lack of food inventory necessary to support the firm's SNAP redemptions as observed and recorded during the onsite visit, the lack of purchase invoices of foods to cover SNAP redemption totals for the review months, the lack of adequate explanations 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 small grocery stores in the State.

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. 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 contentions did not outweigh the evidence in the record.

The owner has not provided sufficient evidence to rebut the convincing 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.

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 dated September 28, 2017. 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

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Paulinos Food Corp Inc. 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 above, the determination to impose a permanent disqualification against Paulinos Food Corp Inc. is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, 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

April 22, 2019