

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

**Pineville Fast Stop,**

**Appellant,**

**v.**

**Case Number: C0207538**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Pineville Fast Stop, (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 June 14, 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 April 30, 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 September 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 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 a May 16, 2018, telephone conversation with Retailer Operations Division, Appellant indicated that it extends credit accounts to SNAP customers. Appellant was informed that SNAP benefits can only be accepted at the time of delivery of eligible food items. In correspondence dated May 18, 2018, Retailer Operations Division informed Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from participation for a period of one year. Appellant was asked to provide documentation to support that food items were purchased on credit as noted in the response provided on May 16, 2018. Appellant was informed that this documentation must identify specific accounts along with corresponding dates and amounts. Appellant was also informed that it had 10 calendar days after receipt of the credit response letter to submit the requested documentation. Appellant provided a number of purchase invoices in support of its position and in correspondence dated June 4, 2018; Appellant provided 10 customer/employee affidavits attesting to Appellant's business practices.

Retailer Operations Division issued a Determination letter dated June 14, 2018. 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 dated June 20, 2018, Appellant, through counsel, 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 September 2017 through February 2018. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. 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**

Appellant, through counsel, submitted an FOIA request for all documentation in this case. The FOIA request was submitted on August 2, 2018, and completed on August 29, 2018. The Appellant, through counsel, 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:

1. As noted by the Appellant in their original response to the charging letter dated April 30, 2018, the store had an active practice of issuing credit to a limited amount of SNAP participants. This practice existed during the review period. The administration of the credit program was informal with records commonly destroyed after credit balances were paid. As such, Appellants were unable to locate any documentation evidencing said credit

program. However, a store who issues credit for SNAP participants, and then accepts payments thereupon, is not required to maintain records of the credit. (case law cited)

2. The Appellants were unaware that the payment of credit with EBT funds was an unacceptable violation of the SNAP regulations.
3. The customer and employee affidavits attest to the training of the store's personnel on proper SNAP policies and procedures and to the belief of Appellant is an honest and ethical businessman. Each person in all 14 affidavits attested to the knowledge and/or observation of many displaced Houston TX residents who moved to Central Louisiana because of the stores, hurricanes, and severe flooding that was taking place.
4. The store clearly had enough inventory for transactions conducted with SNAP benefits during the review period. Based on the chart the store logically has more than enough inventory to account for the SNAP transactions conducted during the review period.
5. Multiple transactions within a set time period: All of these transactions are the result of either the credit issuance programs, co-shopping and/or habits of the SNAP clientele. Participants would authorize the store to run a certain amount, which would be less than the card balance, and would make a second payment or pay off the credit balance. The first transactions were designed to process one transaction, generally at a much smaller amount than the second transaction, which would then allow the participant to obtain the balance on the account.
6. Transaction not satisfying the issuance of credit were the result of co-shopping and a reflection on the normal shopping patterns of the store's SNAP customers.
7. Excessively large transactions: These transactions are the result of the store's inventory, co-shopping, and/or are the normal reflections of a SNAP participant's shopping habits. The store stocked enough inventory to account for the large transactions.

Counsel provided, with his brief, duplicates of all documents originally provided by Appellant, which included 10 customer affidavits, bank statements, and purchase invoices. Counsel also provided a copy of the 2016 US Grocery Shopper Trends report, a copy of the January 2018 USDA Profile of SNAP Households report for Louisiana Congressional District 5 and a copy of the November 2016 USDA report on Foods Typically Purchased by Supplemental Nutrition Assistance Program (SNAP) Households.

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 convenience store on January 31, 2017. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a February 16, 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Appellant is a roadside gas station/convenience store.
- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 720 square feet with very narrow aisles.
- No shopping carts and one hand basket 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.
- Food stored in an area outside of public view in an area approximately 200 square feet.
- Store has storage freezers or coolers but 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 Enfamil Infant Formula (\$21.99), Memphis Wings (\$22.99), Smoked Pork Sausage (\$24.99) and Boudin Links (\$18.99). (these items were not stocked in bulk based on the store visit photographs)
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, accessory items, automotive products, mobile phones, phone cards, health and beauty aids, lottery tickets, clothing items and cleaning products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Limited fresh fruits (which appeared spoiled) or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen. The frozen sausages were open inside of the freezer. Some of the high priced meat items were located in the small ice cream freezer.
- A kitchen/prepared food area with hot foods sold for onsite consumption. A microwave heating-source was available.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials, bundles or fruit/vegetable boxes sold.

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 - Multiple transactions were made from individual benefit accounts in unusually short time frames.**

There were 46 sets of 127 SNAP transactions, which met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period 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. Based on Appellant's inventory it is unlikely that households would legitimately conduct multiple SNAP purchases in a single day ranging from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The presence of these transactions taking place two or more times in a set period is more indicative of trafficking than legitimate SNAP sales. It is important to note that Appellant only had one hand basket and no shopping carts in which to facilitate large amounts of eligible food to justify the SNAP transactions in this Attachment. Appellant carried no fresh meat, bulk or specialty items that sold at high prices and the only fresh produce was a bundle of overly ripe bananas. It is also important to note that, although the store visit photographs showed frozen sausage, there were also photographs showing that Appellant offered that sausage in a cooked form.

Appellant, through counsel, contends that the store had an active practice of issuing credit to a limited amount of SNAP participants. This practice existed during the review period. The administration of the credit program was informal with records commonly destroyed after credit balances were paid. As such, Appellants were unable to locate any documentation evidencing said credit program. However, a store who issues credit for SNAP participants, and then accepts payments thereupon, is not required to maintain records of the credit. (Case law cited) Appellant, through counsel, also contends that Appellant was unaware that the payment of credit with EBT funds was an unacceptable violation of the SNAP regulations.

With regard to these contentions, SNAP regulations at § 278.2(f) provides, inter alia, that: **“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”**. It is important to note that Appellant signed its SNAP Retailer Application on November 4, 2016. By signing the Certification and Signature page of the application, Appellant confirmed, understood and agreed to ... “I accept responsibility on behalf of the firm for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as, but not limited to: ... Accepting Supplemental Nutrition Assistance Program benefits as payment on credit accounts or loans ...” Appellant also received the Training Guide for Retailers, which specifically states, on page 9, “SNAP customers must pay for their purchases at the time of sale. **You may not accept SNAP benefits as payments on credit accounts.** You may not hold customers' SNAP EBT cards or card account information at your store for future use.”

Since attributing suspicious EBT transactions to credit may be an attempt to avoid a more serious sanction, which is appropriate for a trafficking violation indicated by the available evidence, to refute charges of trafficking as part of the retailer's reply to the charge letter, the retailer must provide adequate proof that credit accounts existed at the time the suspicious EBT transactions occurred. It is imperative that the retailer provide evidence to refute charges of trafficking so that the Retailer Operations Division can compare such proof with the transactions outlined in the charge letter. In this case, the customer and employee affidavits, attesting to Appellant's honesty and training of employees, without sufficient proof of credit accounts, do not provide

adequate proof that credit accounts actually existed and were settled with SNAP benefits during the review period. If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking. Please note that there were only 10 affidavits, which were mainly replicated statements, and none of them mentioned credit accounts. An analysis of the affidavits showed that only one signer of the affidavits was identified as a SNAP recipient that conducted transactions at Appellant's store during the review period.

Additionally, the record reflects that during the months of September 2017 and October 2017, only two percent of Appellant's transactions were conducted from out of state recipients. This is not a significant number for Appellant to contend that there was an influx of displaced residents due to the Hurricane. In fact, based on Appellant's stock and store characteristics, one being that it is a drive up gas station/convenience store, it is questionable that Hurricane victims or local SNAP recipients would choose Appellant's store as a first choice to meet a large portion of their grocery needs. Especially since the record reflects that there are 22, SNAP authorized firms within two miles of Appellant, which include supermarkets and a superstore.

The record reflects that Retailer Operations Division presented Appellant with an opportunity to provide documentation and any information, explanation or evidence in support of its claim that the charge letter transactions were because of credit accounts. Retailer Operations Division requested that counsel provide documentation to support that food items were purchased on credit as noted in the response dated May 16, 2018, and that the documentation must identify specific accounts along with corresponding dates and amounts. Appellant, through counsel, indicated that it is unable to provide receipts and documentation as the records of credit were done on an informal basis with records commonly destroyed after credit balances were paid.

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 - Excessively large purchase transactions were made from recipient accounts**

There were 130 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. Transactions during the review period range from 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The average convenience store transaction in Rapides County Louisiana, during the review period, was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The largest purchase amount at Appellant's store, during the review period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is at least 37 times higher than the average SNAP transaction amount for this store type during the review period.

Retailer Operations Division conducted an analysis of the shopping habits of three 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 or superstores in and around the Rapides County area of Louisiana. This is another strong trafficking indicator

Appellant, through counsel, contends that the store clearly had enough inventory for transactions conducted with SNAP benefits during the review period. Based on the chart the store logically has more than enough inventory to account for the SNAP transactions conducted during the review period. Regarding this contention, a number of invoices, for purchases made during the review period, were provided to Retailer Operations Division, and again during this review. Although a review of those invoices indicates that Appellant's purchases were significant for the review period, there still is not enough information to determine whether they account for the sum of Appellant's SNAP and non-SNAP transaction activity. While the overall dollar amount of SNAP activity is relevant, the charge letter did not cite as evidence Appellant's SNAP sales total. Rather, the Retailer Operations Division identified a series of different suspicious transaction patterns. The purchase invoices show that only 10.51 percent were in staple foods and 43.67 percent were of beverage purchases and 45.75 percent were of snack/candy purchases.

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. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, 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 the 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 based on 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 two 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 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 convenience 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 Charge letter. 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 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' 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**

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 April 30, 2018. 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' decision, not to impose a trafficking CMP in lieu of disqualification, is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

Ownership 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.

Retailer Operations Division' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Pineville Fast Stop 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 Pineville Fast Stop 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

November 28, 2018