

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

**Pratt Food Market,**

**Appellant,**

**v.**

**Case Number: C0205419**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is not sufficient evidence to support a finding that Pratt Food Market (Appellant) should be permanently disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for trafficking. The permanent disqualification decision 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 January 24, 2018, 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 orally to the Charge letter January 31, 2018. Retailer Operations issued its Determination letter February 8, 2018, 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. The firm was deemed 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.

The owner provided information and requested administrative review by letter postmarked February 12, 2018. The appeal was granted February 15, 2018. Additional information was requested by Retailer Operations by letter dated March 28, 2018. April 11, 2018, this office received more new information from the owner. Retailer Operations provided its assessment of all the new information on May 15, 2018.

### **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). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern 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, 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 transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of September 2017 through December 2017. The patterns of transaction characteristics indicative of trafficking were:

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

### **APPELLANT’S CONTENTIONS**

Attention has been given to all contentions presented in rendering this decision.

- Enclosed are all the invoices we have for the sales in September 1 to December 31.
- Some of the receipts are missing and we appreciate if we can get more time to find those. Our computer system is upgraded September 16, 2017, and some of the receipts got misplaced.
- We are a small grocery store and only sell food and beverages.

The owner provided detailed itemized register tapes that corresponded to 199 of the charged transactions. Copies of EBT receipts were provided to account for an additional 28 transactions. One additional receipt was included. Also, provided were 98 original vendor receipts.

### **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. After a thorough review of all documentation, it is the determination of this review that Appellant’s evidence, particularly the large percentage of itemized register

receipts corresponding to charged transactions, supports by a preponderance of evidence that legitimate purchases of eligible foods were made at Appellant.

There is no way for this review to definitively conclude that trafficking did not, at any point, occur at the firm. However, a determination of permanent disqualification must be supported to such a degree so as to conclude that trafficking is the most plausible explanation. In light of the evidence and information in the record, this review finds that there are other legitimate explanations, besides trafficking, that could account for the unusual transaction patterns at Appellant.

### **CONCLUSION**

It is the determination of this review that the Appellant has met the burden of proving, by a preponderance of the evidence, that the transactions listed in the Charge letter were, more likely than not, allowable purchases of eligible foods. Therefore, the determination to impose a permanent disqualification against Appellant is 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

June 6, 2018