

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

**Quick Stop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0218525**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Quick 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 September 24, 2019.

**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 3, 2019, 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 2018 through April 2019. 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 correspondence dated July 10, 2019, Appellant replied to the charge letter and generally stated that it did not commit trafficking violations. Appellant stated that it is located in an area where the closest EBT authorized store is nearly six miles away which makes their store convenient for a lot of clients, in particular those without any mode of transportation. Often times we take advantage of sales and discounts at local larger supermarkets and purchase our food supplies for our store in large quantities for resale to our clients. Appellant indicated that it started boxing up merchandise that contained canned meats and vegetables, rice, sugar, salt, pastas, flour, etc., and the box would contain only EBT merchandise, and sold it at a discount. Some clients would shop multiple times a day looking for the perfect deal discount. I often encounter clientele who like to haggle with me over our prices and it's not uncommon for them to counter-offer my prices, or simply ask for a discount. As an immigrant from Pakistan, such practices are the norm. I usually extend the discounted price to the client especially if they are willing to purchase multiple quantities of the same items. Appellant provided photographs of the store's inventory to illustrate the volume of food in the store.

Retailer Operations Division issued a Determination letter dated September 24, 2019. 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 September 26, 2019, Appellant, through representation, 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 2018 through April 2019. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were a large number of transactions ending in the same cents value.
2. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
3. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

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, through representation, 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. Everything in our original response letter is the truth. I did not commit trafficking violations.
2. Perhaps the method we use to sell our goods was not carefully thought out but trafficking was never committed.

3. The disqualification is going to be a great financial hardship for my store and may ultimately force me to either close my business or significantly reduce my staff.

With its review request, Appellant provided a copy of its July 10, 2019, response to the charge letter five black and white photographs of its counter and new POS system. Appellant also provided 191 register receipts in support of its position however the receipts were dated June 2019, July 2019 and August 2019 and considered ineligible during this review as they are dated outside of the review period cited in the charge letter.

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 February 24, 2015. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 16, 2019, 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:

- Two cash registers and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 3000 square feet.
- Two shopping baskets available but no carts available for customers.
- An optical scanner was available at checkout. One specialty register present dedicated to lottery.
- 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 is stored in an area outside of public view that is approximately 50 square feet in size. Contained non-foods
- Store has storage freezers or coolers but no 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 Maxwell coffee (\$5.99), Cereal (\$5.99), Pre-cooked chicken (\$8.99) and Whiting fillets (\$6.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, health and beauty aids, gift items, souvenirs, clothing items, lottery tickets, alcohol and cleaning products.

- Store stocks minimal amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- No kitchen/prepared food area and no hot foods sold.
- Food sold for onsite consumption using a microwave for heating.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Store visit photographs did not show any signs posted or food boxes for sale or on display.

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 – There were an unusual number of transactions ending in a same cents value.**

This attachment lists 179 transactions that met the parameters of this Attachment ending in a 00 cent values. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

Appellant indicated that it encountered clientele who would haggle over prices, which was not uncommon, and it could extend the discounted prices especially if they were willing to purchase multiple quantities of the same item. Of the 1,005 transactions analyzed for this Attachment, 179 or 17.81 percent ended in 00 cents. Based on the store pricing information gathered from the store visit, it is unlikely that items purchased together would routinely total to the same amount. Consequently, when a large number of transactions that end in a same cent amount are regularly conducted, it appears that these transaction amounts are contrived in the absence of any compelling rationale to the contrary and therefore are indicative of trafficking. Especially when item prices end with a standard \*9 it is implausible that several of these relatively inexpensive items purchased together would routinely total to a purchase amount ending in 00 cents. Appellant did not provide any evidence to corroborate its claim of extending discounts to SNAP households.

In addition a store that is rounding prices up or down or an even value would not have any transactions ending in odd values. The store visit photographs and documentation also did not indicate that Appellant offered food boxes as it contends in its response to the charge letter. The store visit photographs do not show any posted signs or boxes of food available for sale at Appellant's store, therefore the photographs provided in its response to the charge letter may have been contrived in an attempt to explain the transactions in the Attachment.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. When many transactions end in a same cents

amount, it appears that these transaction amounts were contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in Attachment 1 have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Based on the analysis above, it appears that the transactions cited in the charge letter are contrived and therefore, in the absence of plausible evidence to the contrary, are likely the result of trafficking in SNAP benefits.

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

There were 19 sets of 51 SNAP transactions that 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.

Appellant contends that it is located in an area where the closest EBT authorized store is nearly six miles away which makes their store convenient for a lot of clients, in particular those without any mode of transportation. Appellant also indicated that it started boxing up merchandise that contained canned meats and vegetables, rice, sugar, salt, pastas, flour, etc., and the box would contain only EBT merchandise, and sold it at a discount

With regards to these contentions, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The transactions in this Attachment do not contain the characteristics associated with a recipient purchasing forgotten items a short time after checking out or households returning to purchase a forgotten item or two. It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a set time period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second transaction amount would be for more than a nominal amount. The SNAP transactions in Attachment 2 of the Charge letter are not consistent with shopping patterns of someone who may have forgotten an item or two during the first trip.

Though it may be true that some SNAP recipients do not have vehicles, and may live close to the store, the assertion that they make multiple trips in order to get the goods they need because they cannot carry them does not provide evidentiary proof if it cannot be corroborated with register receipts to show the purchases of food. Additionally, the record reflects that there are 12 additional SNAP authorized retailers within one mile of Appellant including 10 additional convenience stores, and two (2) medium grocery stores. There were also three (3) superstores and a small grocery store in less than 2 miles from Appellant's store where SNAP households likely shopped. The record also reflects that when compared to other area convenience stores, Appellant had a much higher number of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** than the other comparable or better stocked convenience stores. This is questionable especially since Appellant's stock consists mainly of packaged and/or canned food items, accessory foods, snacks and beverages. Moreover, the store visit photographs and documentation do not show any signs posted or food boxes available for sale or on display as claimed by Appellant.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

**Attachment 3 of the Charge Letter – Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.**

There were 136 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 and overall stock. 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.

Retailer Operations also conducted an analysis of the shopping habits of six 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 Franklin County area of Ohio. It is also noted that a total of the 96 SNAP households viewed during the review period, 68 percent of them used an area large grocery, supermarket or superstore within one day of shopping at Appellant's store and 76 percent shopped at larger stores within three days of visiting Appellant's store. This is another strong trafficking indicator.

Appellant provided, with its review request, 191 register receipts in support of its position. Upon review of the receipts it was noted that they were all dated for the months of June 2019, July 2019 and August 2019. The charge letter review period was November 2018 through April 2019, therefore the register receipts do not provide adequate evidence for the SNAP transactions cited in the charge letter dated July 3, 2019 and are considered ineligible during this review.

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 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 three 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 small grocery stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns 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'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 contends that a disqualification will cause great financial hardship and that it may ultimately be forced to close the business or significantly reduce its staff. Appellant was notified in the charge letter dated July 3, 2019, 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 Quick 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 Quick 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

March 12, 2020