

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

**Quick Stop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0216727**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Quick Stop Mini Mart (Quick Stop or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**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 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.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division 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 USC § 2021 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 11, 2019, the Retailer Operations Division charged 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 August 2018 through January 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 Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, replied to the charges by letter dated April 19, 2019. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated June 5, 2019. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter postmarked June 15, 2019, ownership, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

## CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, eligible foods means:

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 § 271.2 defines trafficking, in part, as:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; . . .

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**, . . .” (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.

7 CFR § 278.6(i) states, inter alia:

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.

7 CFR § 278.6(b)(2) states, in part:

- (ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]
- (iii) **If a firm fails to request consideration for a civil money penalty** in lieu of a permanent disqualification for trafficking **and submit documentation and evidence** of its eligibility **within the 10 days** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

## SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from August 2018 through January 2019. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were a large number of transactions that ended in a same cents value.
- There were multiple transactions made from an individual SNAP within a set timeframe.

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

In its June 15, 2019, administrative review request, Appellant provided the following summarized contentions:

- The decision should be overturned because there is no evidence of trafficking and this is the first allegation ever brought against the firm.
- See *Willy's Grocery v. U.S.*, 656 F.2d 24, 26 (2d Cir. 1981).
- To establish a violation the government must show by admissible evidence that SNAP benefits were accepts as payment for ineligible items and references court cases.
- There was no investigator that visited the store and the decision was based solely on a review of EBT transaction by a computer system.
- A review of the attached credit card transactions would point to the same conclusion that these transactions are nothing but normal for this small grocery.
- SNAP sales only account for 10-20% of its sales and most sales are cash and credit sales.
- Appellant is a very busy grocery store located near several low-income housing buildings.
- Many stores have closed nearby causing many new customers to patronize Appellant.
- Appellant has been in in business for many years and has many loyal customers because of its low prices and volume discounts.
- There is a high rush of EBT customers starting at 8:00 AM and continuing all day.
- There are also many non-EBT customers who account for the majority of sales and have made it difficult to perfectly train employees as to all aspects of the business including SNAP regulations.
- Appellant requests a CMP.
- Appellant states that is has kept transactions from the day it began operations and that demonstrates that it had an effective compliance policy and it had a training program for employees.

- Appellant has offered to make changes to its policies and procedures to allay the USDA's unfounded fears.
- Appellant has absolutely no history of prior violations and the owner depends on the income from his business; the owners had no intention of ever benefiting from any violations of the SNAP.
- The store does not do business the same way as large supermarkets so it does not denominate its prices based on the customers 99 cents increments. The pattern of credit card transactions are consistent with the EBT transactions.

In support of its contentions, Appellant provided the following documents:

- Twenty-seven invoices dated in April 2019 or undated;
- Three customers statements;
- Statement from owner providing authorization of representation;
- Twenty-nine photographs of the store interior; and
- Credit card statements from January 2018 through February 2019.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Quick Stop as a convenience store on November 19, 2008. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 2, 2019, store visit 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:

- Quick Stop is approximately 1100 square feet with no storage outside of public view.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- The checkout area is located behind a Plexiglas counter that has a turnstile window to pass items for purchase through to complete transactions.
- There was no fresh unprocessed meat, poultry, or fish
- There was no fresh produce.
- Dairy included milk, butter, and yogurt.
- Other staple foods available for purchase were cereal, bread, tortillas, eggs, juice, rice, beans, pasta, and a selection of canned goods.

- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included alcohol, tobacco, health and beauty products, cleaning products, and paper products.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items, and accessory food items. The highest priced items noted were the following: honey - \$14.99; canola oil - \$11.99; red bull - \$10.00; and Nescafe - \$9.99. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

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### **Charge Letter Attachments**

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.

**Charge Letter Attachment 1. There were an unusual number of transactions ending in a same cents value.** During the review period, there were 443 transactions ending in a same cents value that meet the parameters of this attachment. When such patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits.

The store did not carry any large packages to explain large even dollar transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large even dollar transaction amounts are questionable because they are not consistent with the store's inventory with no fresh meat and limited fresh produce. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, and snack foods. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

Counsel contends that the store does not do business the same way as large supermarkets so it does not denominate its prices based on the customers 99 cents increments. However, the store visit report that was completed with the cooperation of the store employee indicated that typically prices ended in 9 cents. As indicated previously, the highest priced items noted were the following: honey - \$14.99; canola oil - \$11.99; red bull - \$10.00; and Nescafe - \$9.99. Mostly of the stores prices clearly end in 99 cents. It is possible that some of the smaller transactions are the result of purchasing some same cent items and this could explain some of the lower dollar same cent transactions. However, the larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these

purchases would routinely total to an amount ending in same cents. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

**Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in a set timeframe.** This attachment documents 9 sets of transactions that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Counsel explains that Appellant is a very busy grocery stores located near several low-income housing buildings. Many stores have closed nearby causing many new customers to patronize Appellant. Appellant has been in in business for many years and has many loyal customers because of its low prices and volume discounts. This may be true but it does not explain why customers would make larger than average repeated purchases within a short time at Appellant and this pattern is not seen at other nearby locations.

The Retailer Operations Division compared Appellant to two convenience stores all located within .20 miles from Appellant. Appellant's average SNAP transaction amount and total SNAP redemptions dollar volume was greater than each of the other two stores. The Retailer Operations Division also determined that the two transaction patterns of Appellant, described in each of the charge letter attachments, exceed the other two authorized stores, as seen on the table herein. The number of transactions meeting this pattern during the review period is irregular.

#### 5 U.S.C. § 552 (b)(7)(E)

The Retailer Operations Division determined that there are 41 other authorized retailers located within a half- mile radius of Appellant including ten other convenience stores, eight combination stores, eight small groceries, six medium groceries, two large groceries, three supermarkets, and two super stores. There are numerous other shopping options located within a reasonable distance with likely equal or better food stock and potentially better prices than Appellant. The

Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Quick Stop compared to their shopping patterns at other SNAP authorized stores. Each of the households conducted excessively large transactions at Appellant within a short time of shopping at a supermarket or super store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is questionable as to why households would conduct large transactions at Appellant, a store without fresh meat or fresh produce, not shopping baskets or carts, when these household had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #1 were legitimate purchases of eligible food.

## **Evidence**

Counsel submitted three customer statements. There were no EBT card numbers attached therefore these households could not be matched to any of the transactions listed on the charge letter attachments. These statements were not sufficient evidence that the transactions were for eligible food times only.

Counsel submitted photographs of the store interior. The photographs are similar to the store visit. However, there are signs posted advertising specials that were not there during the store visit. The store is also more fully stocked in the photographs submitted by counsel; whereas the photographs taken during the contractor store visit show empty shelves. It is likely that the signs and stocking of shelves were for the purpose of responding to the charges.

Appellant submitted invoices of some of the stock that it purchased. However, all of the invoices were dated April 2019 which is outside of the review period. These invoices are therefore not sufficient evidence that the firm purchased sufficient inventory to support its SNAP redemptions.

Appellant contends that it submitted its credit card transactions to show that the transactions are not unusual. However, the documents just provide totals and does not show what is debit, credit, or EBT and therefore an analysis cannot be completed. This was not convincing evidence that the transactions listed in the Charge Letter was for eligible food items only and were normal transactions for the store.

Counsel contends that the decision should be overturned because there is no evidence of trafficking. The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.



The legality of this method is supported by 7 CFR §278.6(a) which states, inter alia, “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 . . .**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

### **Lack of Prior Violations**

Counsel reports that the firm has had no previous violations. A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. §2021(b)(3)(B) and 7 CFR §278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

### **Case Law**

Appellant cites some case law which it claims supports its position. It should be noted that considerations of legal precedent through case law is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law.

### **Summary**

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. 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 to legitimize 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.

### **CIVIL MONEY PENALTY**

Appellant requested a CMP. The criteria for a trafficking civil money penalty in lieu of disqualification is established under 7 CFR § 278.6(i) which reads, inter alia:

"In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations ..."

Appellant indicated that it had a training program and had a policy in place prior to the charge letter being issued. Appellant submitted a one page document listing the items that can and cannot be purchased with SNAP benefits. Counsel also states that Appellant's history of no violations is evidence of its compliance with all procedures and regulatory policies of the SNAP.

The Retailer Operations Division determined that Appellant was not eligible for a CMP because there was insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program prior to the SNAP violations in this case. For example, there were no training logs, training agendas, signed training certificates, or any other documentary evidence showing that SNAP training was provided to its employees. The Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate according to 7 CFR § 278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 the Appellant's owner resides or is 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, 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

September 30, 2019