

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

**Quickie Mart,**

**Appellant,**

**v.**

**Case Number: C0222471**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Quickie Mart (Appellant) by the Retailer Operations Division (Retailer Operations).

**ISSUE**

The issue accepted for review is whether or not Retailer Operations took action consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c), and (e)(1), when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023, and the 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 FNS.

**CASE CHRONOLOGY**

In a letter dated October 22, 2019, Retailer Operations informed ownership that it had compiled evidence that Appellant had violated SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable activity for the firm type. The letter also noted that 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).

The case record shows that Appellant's ownership, through their tax accountant, responded to the Charge Letter on November 4, 2019, November 17, 2019, and November 18, 2019.

After considering Appellant's replies and the evidence in the case, Retailer Operations issued a Determination Letter dated December 16, 2020, informing Appellant that it was being permanently disqualified from SNAP participation, for trafficking violations in accordance with § 278.6(c) and (e)(1) of SNAP regulations. The letter also stated that Appellant was not eligible for a trafficking CMP as Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated December 25, 2019, Appellant's ownership, through their tax accountant, appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated January 3, 2020. Additional information in support of the case was faxed on February 3, 2020.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving, by a preponderance of evidence, that the administrative action should be reversed. This means that 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 law in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exists FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states: 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: Trafficking means 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.

7 CFR § 278.6(b)(2) states:

(ii) Firms that request consideration of a CMP 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 CMP 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).

(iii) If a firm fails to request consideration for a CMP 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 penalty.

7 CFR § 278.6(e)(1)(i) states: Disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(f)(1) states: A CMP for hardship to SNAP households (HHs) may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states: FNS may impose a CMP 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**

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

1. There were multiple transactions made from the accounts of individual SNAP HHs within a set time period; and
2. There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

## APPELLANT'S CONTENTIONS

In its replies to the Charge Letter and administrative review request, the following summarized contentions were made:

- Ownership denies trafficking in SNAP benefits.
- The average percentage of SNAP eligible sales to non-tax food sales is 60 to 65%.
- SNAP payments in a month's time amount to roughly 20-25% of average inventory.
- The store is located in a very low-income area near downtown Yakima, WA. The store serves a neighborhood that has a very high concentration of SNAP participants.
- A lot of low-income residents walk to my store instead of going to larger grocery stores, such as the closest 5 U.S.C. § 552 (b)(6) & (b)(7)(C) store which is 1.6 miles away, following a walking/driving route.
- The store is across the street from a small park where homeless people hang out for two or three weeks at a time, especially when the weather is good - Spring, Summer and Fall. Many of the homeless people receive SNAP benefits and use their EBT card at my store.
- My store is in a building that has 6 apartments, each of these households (HHs) receive SNAP benefits, and the residents of these apartments often make 2-3 EBT purchases in my store daily.
- My operation is rather small. I do not have a scanner system to track specific items sold as EBT transactions. I have a very simple cash register to issue paper receipts to my customers. It does not have a journal tape. Daily sales records are kept from the end of day, reading off the register.
- EBT purchases are made on a stand-alone terminal, separate from the cash register. All EBT transactions are performed by the customer using their card and PIN on the terminal. Each customer is asked whether their purchase is cash or EBT. EBT items are rung up separately and then processed on the EBT terminal. Cash transactions are rung up separately.
- A person came by my store to take pictures and make sure I carry the required products for sale. This person told me that I am in compliance with the requirements he checks.

In support of these contentions, the following documents were submitted for review:

- Letter of Representation dated 12/17/19
- Photos of store products
- Inventory list
- Percentage of SNAP eligible sales to total non-tax food sales (April–July 2019)
- Washington State Department of Revenue Combined Excise Tax Returns Reports (March-August 2019)
- Vendor Invoices (March–August 2019)
- Summary of SNAP eligible items to invoice totals for each vendor

The preceding may represent a summary of Appellant's contentions 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 referenced herein.

## **ANALYSIS AND FINDINGS**

### **Store Background and FNS Store Visit**

FNS authorized Appellant as a convenience store for SNAP participation on November 29, 2017, operating in Bell County, Yakima, Washington. The case record indicates that in reaching a disqualification determination, Retailer Operations considered information obtained during a April 27, 2019, store visit conducted by an FNS contractor to observe the nature and scope of Appellant's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for Appellant's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,800 square feet in size;
- There is no food stored in a storage area out of public view or stored at another location;
- There are no shopping carts or hand-held shopping baskets available for customer use;
- There is one cash register, one EBT point-of-sale (POS) device, and no optical scanners for ringing-up SNAP transactions;
- There is one checkout counter area with limited check-out counter space;
- The store does not primarily sell one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables;
- There are no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, or grocery package deals;
- There are no meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- There is no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- There is no special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone or on-line orders are not taken and delivery is not offered;
- ATM or money transfer service is offered;
- There is an area with hot coffee, fountain drinks, Slurpees, and a microwave available for customer use;
- There is a kitchen/food prep area with a heating source (deep fryer) for hot food sold;
- There is a menu board listing hot food items sold and prices;
- There is no deli or prepared food section;
- The four highest SNAP-eligible items, priced at \$5.00 or higher, offered for sale were: 12-oz Folgers instant coffee priced at \$9.99; 4-pk of 8.4-oz can of Red Bull priced at

\$7.99; 2.85 oz of Jack Links beef jerky priced at \$7.99; and a 12-pk of 12-oz cans of Pesi priced at \$5.99;

- Ineligible nonfood items included lottery tickets, tobacco products, alcoholic beverages, automobile products, health and beauty aids, paper goods, and cleaning products.

The store visit report and photos show Appellant carried sufficient quantities and varieties in each of the four staple food categories to be eligible for SNAP participation. The food stock was typical of a convenience store, where HHs normally purchase a limited number of items. The SNAP-eligible food stocked by Appellant was generally of a low dollar value, consisting mainly of inexpensive canned, packaged, and bottled foods, snack foods, beverages, and condiments. There was little indication that HHs would be inclined to regularly visit Appellant to purchase large quantities of groceries to provide for all of a person's nutritional needs. There were empty/broken/unused coolers/freezers and empty shelves. Given the available inventory and the store's characteristics, this review could find no reason why Appellant's SNAP redemption patterns differed so significantly from those of similar sized competitors.

### **Charge Letter Attachments**

On review, the investigative materials provided by Retailer Operations, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and SNAP HH shopping patterns, were analyzed.

Stores caught in trafficking violations consistently display particular characteristics or patterns of transactions, including those cited in the Charge Letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge Letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Multiple Transactions Made from the Accounts of Individual SNAP HHs within a Set Time Period (Charge Letter Attachment 1)**

This Charge Letter Attachment documents 20 sets of transactions (43 total transactions) from 14 different SNAP HHs 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Multiple transactions conducted by the same SNAP HH 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, store type, and structure and are indicative of trafficking.

Appellant, through their accountant, contends, Appellant is in a building that has 6 apartments, each of these HHs receive SNAP benefits, and the residents of these apartments often make 2-3 EBT purchases at Appellant daily.

The case record shows that an analysis was done on the 14 SNAP HHs in this Attachment, and none had an address located directly above Appellant.

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 or food cases for sale. In addition, the store's limited checkout space and lack of shopping baskets and carts is unsuitable for large transactions.

This review does not doubt that Appellant sells eligible food items and conducts legitimate SNAP business, but when unusually large and repetitive transaction sets form patterns that are substantially different from comparable stores in the area, further evidence from Appellant is warranted to verify that there is not something more, such as trafficking or other program violations, taking place.

### **Large EBT Transactions Based on Observed Store Characteristics and Recorded Food Stock (Charge Letter Attachment 2)**

This Charge Letter Attachment lists 398 SNAP transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in Yakima County or in the State of Washington. Retailer Operations determined that during the review period, the average SNAP transaction amount for a convenience store in Yakima County was \$7.92 and slightly higher in the State of Washington at \$8.07. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously stated, Appellant has a limited food stock typical of a convenience store and does not have any features that would induce people to spend substantially more than the typical convenience store purchase amount.

Appellant's food stock and facilities, as reported in the store visit report, do not appear sufficient to provide for all of one's nutritional needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. It is rare for a convenience store such as Appellant's to have purchases like those included in this Attachment.

The store visit report indicated that there were no hand baskets or shopping carts in the store. It is not plausible that Appellant's customers would regularly carry large amounts of merchandise around the store without the benefit of hand baskets or shopping carts. There are no legitimate

bases for SNAP customers' unusual attraction to Appellant such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered.

Ownership, through their accountant, contends Appellant is located across the street from a small park, where homeless people hang out for two or three weeks at a time. Many of the homeless people receive SNAP benefits and use their EBT card at Appellant.

It is unlikely that the homeless population would have the ability to store any significant quantity of food to account for the large transactions in this Attachment.

Ownership, through their accountant, contends that a lot of low-income residents walk to Appellant instead of going to larger grocery stores, such as the closest 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is 1.6 miles away, following a walking/driving route.

The case record shows there are 18 authorized SNAP stores within 1.0 mile of Appellant including 6 other convenience stores, 4 small grocery stores, 5 medium grocery stores, and 3 super stores that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Appellant and offer a greater quantity and variety of food products at comparable or better prices as compared to Appellant. The record shows that SNAP HHs who shopped at Appellant during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. When considering Appellant's SNAP-eligible stock, it is unlikely that a HH would legitimately spend a substantial portion of their benefits at Appellant when they are already shopping at larger stores that offer a greater variety of foods at a lower price.

Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases. The tax returns provided do not break down Appellant's eligible and non-eligible SNAP sales and do not provide convincing evidence to establish the legitimacy of these excessively large transactions. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **Invoice Analysis**

Appellant's ownership, through their accountant, submitted various vendor invoices for the review period and a breakdown showing what amount of the invoices were for SNAP-eligible items. The case record indicates that Appellant's accountant stated Appellant's inventory markup was 60-85%, he would reconfirm with Appellant's ownership, but never reconfirmed with Retailer Operations. For purposes of the inventory analysis, Retailer Operations used the highest percentage in the stated range and used the amounts provided by Appellant. The analysis shows that Appellant did not purchase enough inventory to cover its SNAP redemptions for the review period. Even if the invoices did show that Appellant purchased sufficient food inventory to account for its SNAP redemption volume, sufficient inventory alone does not explain the

suspicious patterns of SNAP transactions such as multiple transactions made from individual benefit accounts in unusually short time frames. The large dollar transactions would also remain questionable if there were sufficient food inventory to support such transactions when consideration is given to there being no shopping carts, a cluttered counter space to place food for purchase, and mostly inexpensive inventory. The invoices are insufficient to explain Appellant's questionable transactions.

## **Evidence of Trafficking**

Appellant's ownership, through their accountant, denies trafficking of SNAP benefits. They describe their operation as rather small and they do not have a scanner system to track specific items sold as EBT transactions. They have a very simple cash register to issue paper receipts to its customers and it does not have a journal tape. Daily sales records are kept from the end of day, reading off the register.

They explain that EBT purchases are made on a stand-alone terminal, separate from the cash register. All EBT transactions are performed by the customer using their card and PIN on the terminal. Each customer is asked whether their purchase is cash or EBT. EBT items are rung up separately and then processed on the EBT terminal. Cash transactions are rung up separately.

The purpose of this review is to either validate or to invalidate the earlier decision of Retailer Operations and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that 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 untrue.

The ownership and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years Federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Regulations at § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". 7 CFR § 278.6(a) of SNAP

regulations clearly state 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 on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at Appellant during the review period. Appellant was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by Retailer Operations before the decision was made to issue a Charge Letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns of SNAP HHs conducting transactions at Appellant during the review period. This analysis also included a review of Appellant to ensure its store classification was correct and the data comparisons with like type firms valid.

Store photographs, vendor invoices, product inventory, and State Sales Tax Reports were advanced to counter the trafficking charge, but do not provide sufficient evidence that the transactions listed in the Charge Letter are legitimate food purchases. Appellant’s accountant stated that the average percentage of SNAP eligible sales to non-tax food sales is 60-65%, and estimated Appellant’s monthly SNAP payments to be 20-25% of its average inventory.

These are not valid explanations to the charges of trafficking. The store’s inventory gives no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors. Also, giving consideration to the local comparable and superior competition, there is little reason for SNAP recipients to conduct abnormally large transactions for this store type.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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 Charge Letter evidence trafficking as the most likely explanation for the questionable transactions listed.

### **CIVIL MONEY PENALTY (CMP)**

Retailer Operations determined Appellant was not eligible for a CMP in lieu of permanent disqualification for trafficking, under 7 CFR § 278.6(i), because it failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations. Therefore, Retailer Operations’ decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

### **CONCLUSION**

Retailer Operations' analysis of Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. Appellant's contentions do not outweigh this evidence.

Appellant did not provide sufficient evidence to support its claim that all listed transactions were due to the sale of eligible food items. 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, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to § 278.6(i) of the SNAP regulations.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to the SNAP Regulations at 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 Appellant's owners 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 30 days of receipt of this Decision. Please note that the judicial filing timeframe is specified in the Act, and this office is unable to grant an extension.

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.

Kim Dameron  
Administrative Review Officer

August 27, 2020