

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

**Quik Mart,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0218411**

**FINAL AGENCY DECISION**

The record supports that the Quik Mart (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the Program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

**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 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 the Food and Nutrition Service (FNS).

**CASE CHRONOLOGY**

By Charge letter dated July 15, 2019, 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 owner, via counsel, responded to the Charge letter via a letter and information dated July 24, 2019.

Retailer Operations issued a Determination letter dated August 20, 2019. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated August 28, 2019, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated October 1, 2019.

### **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 credible, 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 November 2018 through April 2019. The patterns of transaction characteristics indicative of trafficking are:

1. There were a large number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts within a set time period.
3. The majority or all of individual household benefits were depleted within short time frames.
4. The EBT transactions are large based on the observed store characteristics and recorded food stock.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, consideration has been given to all contentions, including any not referenced.

- EBT card sales have recently spiked at Petitioner’s business since the Dept. of Transportation reopened the entry way on 2/19 to the store which was under construction for 4.5 years.
- Petitioner holds itself out as a fully functioning grocery store.
- Most customers buy groceries for their entire household.
- The families stock up on cases of water and non-perishable foods since there is no food sold in the motels nor is there a fridge to keep items such as fruits and vegetables to prepare a proper meal. A family purchases 6 to10 cases of water the first day that they move into the motel.
- Families use the store as their sole place of food purchase.
- A card can be used numerous times in a day because there are numerous individuals in each family. There is a significant number of unemployed customers that frequent the store. There is a high concentration of homelessness.

- There has never been any violations. The petitioner has never violated any laws related to section 278.6 (e)1 and 272.2.
- The petitioner and his employees were the only employees during the term of the investigation.

Counsel provided: Exhibit A - customer affidavits; Exhibit B - employee affidavits regarding training; Exhibit C - store photos; Exhibit D - receipts relating to the transactions listed on the Charge letter; Exhibit E - an owner affidavit; and Exhibit F - invoices. It should be noted that no information was provided for Exhibit D. This was also the case in counsel's request for review, no Exhibit D information as identified was provided.

## ANALYSIS AND FINDINGS

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.

**Attachment 1:** Listed are 98 transactions that ended in 00 cents, 65 transactions ending in a same cents value of 01 cents, and 51 that end in a same cents value of 99 cents. Based on the store pricing information gathered from the onsite store visit, it is unlikely that items purchased together would routinely total to the same ending cents amounts. 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, and in the absence of compelling evidence to the contrary, this pattern is indicative of trafficking.

Contentions:

- The majority of prices in the store end in the following values: 0.00 and 0.50. If a person purchases 4 items, 2 of which end in .00 and 2 of which end in .50, the final result will be in a purchase ending in .00.
- Negotiating a payment: Many customers negotiate a price when they reach a certain dollar amount. If a purchase adds up to an uneven number, they tell the clerk to give them a deal on their large purchase. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

The owner did not furnish a price list of eligible foods at Appellant. As such that the majority of prices end in 00 or 50 cent values is not supported by other evidence. The six black and white store photos provided by counsel are not clear as to pricing. These photos do not depict any special or unique items, rather they show typical convenience store foods such as chips and drinks. The record shows that the store visit documentation indicates that the FNS contractor found that Appellant had no unusual pricing structure such as items ending in 00 cents. This evidence in the documented store visit record contradicts counsel's contention.

Most of the stock seen in the FNS photos appears to be accessory foods such as snacks and beverages. The store is typed as a convenience store which is fronted with gas pumps. The

owner's own SNAP authorization application shows that he estimated that 65% of his retail sales were for tobacco products, alcohol, lottery, gasoline, and other non-food items. The evidence under review more supports that Appellant is a convenience store than that it is a full grocery store as contended.

Counsel provided no documentation to support that customers negotiated payments when the amounts were uneven totals. The store visit report as seen in the record supports that there was no transaction rounding at Appellant. This evidence contradicts the contention. No cash register tapes to support the contention of legitimate SNAP food sales were advanced. Appellant has the burden to provide relevant evidence to rebut the trafficking charges.

**Attachment 2:** Listed are 292 transactions in 89 sets conducted by 48 unique households (HHs). Thirty-five percent of the transaction sets were processed 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Multiple transactions within a set time period are a method stores use to avoid high dollar transactions, and are indicative of trafficking.

Contentions:

- The overwhelming majority of customers live next door in one of two motels.
- Motels attract families that stay with them for a few days to a few months. The families are nearly all on public assistance.
- They visit the business numerous times throughout the day. Each household card is shared among the members of the household as the residents of the motel come together as a family to shop for merchandise.
- They may or may not have a vehicle, so multiple family members come together and help each other carry their groceries back to the hotel. The following items are most often sold together, where cases of water are charged separately depending on the amount sold which is discounted prior to charging the other EBT-qualified items: 1. Water cases; 2. Milk; and 3. Canned food.
- Wholesale invoices are attached to show the high volume of wholesale purchases that normally have a mark-up of 30% to 50%.

Retailer Operation found that it would be more likely that recipients with unstable living situations would purchase staple foods to sustain their families for longer periods of time, rather than snacks and accessory beverages. Retailer Operations found it questionable that recipients without transportation would purchase up to ten cases of water in a single shopping trip. Appellant provided no cash register tapes as evidence of eligible food sales during the review months.

It was stated that customers share their EBT cards and help each other carry items back to the motels. When a household is certified for participation in the SNAP, if there are multiple families living in one household and every member of the household purchases, prepares, and eats food together, the benefits issued are for the entire household. However, if there are multiple individuals living under one roof, and they purchase, store, prepare, and eat separately, their benefits are issued as separate households, each with its own EBT card. Therefore, the different shopping priorities and needs of multiple families residing under one roof are not necessarily dispersed via a single SNAP benefits account and EBT card.

The data confirms that a convenience store within 0.12 miles of Appellant had zero sets of data that were flagged that met this Attachment's parameters. If multiple purchases were typical for the motel recipients, one would expect to likely see this pattern at this nearby convenience store. The data also supports that 73% of the HHs listed on this Attachment shopped at a supermarket, or super store within one day of making a transaction(s) at Appellant. Thus, recipients had access to, and did use other shopping options to transact SNAP benefits.

Retailer Operations determined that Appellant had more sets of transactions flagged on this Attachment's parameters than three other convenience stores located less than a mile away from Appellant. Appellant had 89 flagged data sets while the three other nearby convenience stores each had zero data sets flags. Thus, Appellant's activity was unusual and suspicious.

The owner provided one hand written customer statement that was difficult to read, including the signature. The statement has no EBT card number, or any other identifying information such as an address. As such, Retailer Operations could not match the recipient to the state terminal to assess the households' SNAP shopping history, or if the HH had any flagged transactions on the Attachments. The statement indicated that the individual purchased snacks with SNAP benefits, and that he/she bought gas with debit. Thus, this recipient presumably had a vehicle to transport groceries.

The record shows that on August 13, 2019, Retailer Operations' staff emailed the attorney to discuss discrepancies identified with the invoices provided by the owner. The record shows there was no response by counsel. Therefore, invoices that presented discrepancies were not used by Retailer Operations. For example, invoices that contained dates outside the review period, incorrect store names, were difficult to read, listed only ineligible items, and were not itemized in detail, were excluded by Retailer Operations in its estimate of eligible foods inventory at Appellant.

Retailer Operations applied markups of 30% and 50% to invoices that appeared credible, and it calculated that the store did not provide documentation to support that it purchased sufficient eligible foods during the review period to cover its SNAP redemptions at either markup percentage as given by the owner.

No itemized cash register tapes to support eligible food sales at Appellant were provided. No business federal tax records or state sales tax reports were advanced. No business banking records were advanced to support the owner's contention that trafficking was not occurring at Appellant.

**Attachment 3:** Listed are 45 transactions in 13 sets conducted by nine different households whereby the bulk of the SNAP households' remaining benefits were depleted within short time frames. Of the 13 data sets, 61% have the first transaction as the largest or equal dollar transaction amount. The regulations are clear that no purchase is required for recipients to obtain benefit balance information.

Contentions:

- Petitioner neither admits nor denies that remaining benefits were depleted in short time frames.
- The USDA's guideline do not specify how frequently and/or how much a person can purchase.
- When making the sale, the manual clearly states that you should encourage your customers to pay the remainder of the bill by cash if they do not have enough money left on their EBT cards.
- Petitioner helps its customers in taking their first step by making a smaller purchase followed by a larger or similar purchase once it is determined how much money they have remaining on their card.

Appellant, a convenience store, sells nonfood and ineligible items including: gasoline, lottery tickets, tobacco products, alcohol, mobile phones, phone cards, automobile products, health and beauty aids, paper goods, cleaning products, gift items, party goods, and souvenirs. The register is located behind a plastic barrier. There is a small plastic opening behind a barricade to pass items to the cashier for processing and payment exchange. The counter space in front of the window is narrow. The store visit report shows Appellant had no shopping carts or baskets. Retailer Operations determined that Appellant had more transactions flagged on this Attachment's parameters than three other convenience stores located within less than a mile of Appellant, each of which had zero flags. This is unusual.

Retailer Operations found it unlikely that SNAP beneficiaries would legitimately exhaust their benefits at Appellant for eligible foods. While the regulations allow recipients to make transactions for eligible foods as frequently they like, a study of SNAP recipient shopping behavior shows that it typically takes two weeks to deplete 80 percent of a recipient's benefits, and three weeks to deplete 90 percent. Making single or multiple transactions of large dollar amounts, or cumulatively large dollar amounts, and/or depleting substantial amounts of one's benefit allotment in one day, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP households. Rather, transactions of large amounts, or large cumulative transaction amounts, during a short period of time are indicative of trafficking.

**Attachment 4:** Listed are 317 transactions conducted by 76 unique HHs for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. The data shows that 79 percent of the households flagged on this Attachment conducted a transaction(s) at a supermarket, or super store within one day of making a transaction at Appellant. Appellant had many more flags on this Attachment as compared to three nearby same type stores which had 5, 3, and 1 transaction flags respectively. Appellant had 5 U.S.C. § 552 (b)(7)(E) higher SNAP dollar volume than same type stores in the DeKalb County, and an average SNAP transaction amount that was 5 U.S.C. § 552 (b)(7)(E) higher than same type DeKalb County stores. This is unusual.

The onsite store visit report confirms that Appellant did not sell fresh meats, seafood, produce, have an onsite bakery, or a variety of staple food items that would reasonably classify it as a full grocery store. Appellant has minimal counter space at the checkout area. The store report indicates there were no handheld baskets and no shopping carts to gather items that might total to

large dollar transaction amounts of eligible items. Nonfood, SNAP-ineligible items included: tobacco products, alcohol, automobile products, health and beauty aids, paper goods, cleaning products, and gasoline. This is a convenience store that offered a selection of snacks and beverages as well as a limited variety of canned foods. Retailer Operations found it more likely than not that the large dollar transactions were indicative of trafficking.

Retailer Operations conducted a review of several HHs' shopping patterns at Appellant. One household flagged had suspicious transaction amounts that repeated. The household conducted transactions that were similar, if not the exact same amount, as transactions during the months of December, January, and March. It is unusual to see transactions with the same or similar amounts being conducted during several months. For example, in December the HH conducted three transactions #768, #769 and #770 each for the exact same amount. In January the HH again conducted two sets of two transactions each for the same or similar amounts as seen in transactions numbers 265 and 266. Another household conducted three manual transactions #665, #666, #667 in two days all for the exact same amounts. This is suspicious.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. The vendor invoices of eligible items acquired in inventory did not total to amounts that could cover Appellant's SNAP redemptions. The owner provided no itemized cash register tapes for the review months. As noted, no information was provided for listed Exhibit D. No pricing information was advanced. No federal business tax returns or state tax filings were provided, and no business banking statements were submitted. Thus, the owner has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking.

Contentions:

- Petitioner has implemented an effective compliance policy. A photocopied booklet is provided to each of its employees and issues concern EBT processing are addressed as questions and issues come arise.
- Petitioner has been in business since 2016 and has been an authorized EBT vendor since 2017. Since this time, Petitioner has been active in ensuring full compliance with his employees and their obligations to the USDA/FNS.
- Petitioner's compliance policy with his employees clearly states the following: There is no exchange for cash for EBT card swipes; Do not allow other individuals to share a card; Only sell qualified EBT grocery items to your customers.
- Since the charge letter was received, Petitioner discourages customers for checking their balances for its customers prior to them using their card. They have since stopped this practice after consulting with legal counsel.
- Petitioner has also stopped customers from making purchases of large volumes of EBT qualified drinks during a single transaction.



- The training program implemented by the Petitioner: Review the FNS Handbook with each new employee; Call the USDA if you have any questions.
- Petitioner has not realized any benefit to himself by way of allowing illegal EBT transactions at his business. He has committed himself to serving his customers in a highly dangerous and impoverished area.

The four criteria listed at the cited regulation are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. Given these considerations, it is clear that the statute and the regulation allow no flexibility below the level of this stated standard. The record reflects that Appellant's reply to the Charge Letter fell short of this standard.

The owner did not provide any detailed documents as evidence that the store had a compliance policy in place. No documentation of the development and/or operation of a policy to terminate violating employees was advanced. No documentation of development and/or operation of procedures/policy to implement corrective action in response to complaints of violations was provided. No documentation of development and/or operation of procedures providing for internal review of employees' compliance was provided. As such Criterion 1 was not met.

Appellant did not provide documentary evidence which establishes that the firm's compliance policy and program were in operation prior to the occurrence of the violations at issue. It was stated that subsequent to the Charge letter petitioner has stopped customers from making purchases of large volumes of EBT qualified drinks during a single transaction. This shows that the owner still is not clear as to the SNAP rules and regulations, as this is not allowed. As such Criterion 2 was not met.

The owner provided a statement dated July 19, 2019, that he trained his employee with an EBT video. One employee provided a statement that he was trained to comply with food stamp and EBT regulations. The owner did not submit any documentation or details on Appellant's training program. The owner did not provide documentation of dated training curricula or dates of training sessions prior to the violations, records of dates of employment of all firm personnel, or contemporaneous documentation of participation of personnel in initial and follow-up training prior to the charged violations. This criterion was not met.

Even though it was stated that the owner did not benefit from the violations, the owner benefited from the transactions because the transactions are electronically conducted, and SNAP EBT benefits are directly transferred to the owner's bank account. As such, the record does not support by a preponderance of the evidence that Appellant met the requirements for a trafficking CMP.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and HH shopping analyses that provided

substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on empirical data and in the absence of evidence of the legitimacy of the transactions presented by Appellant, the preponderance of the evidence supports that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations with respect to applicable rights to judicial review of this decision. If 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 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.

M. Viens  
ADMINISTRATIVE REVIEW OFFICER

November 7, 2019