

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

R & M Grocery LLC,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0224772

FINAL AGENCY DECISION

The record supports that R & M Grocery LLC (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 Office of Retailer Operations and Compliance (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 February 6, 2020, 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. By written reply dated February 28, 2020, counsel responded to the Charge letter.

Retailer Operations issued a Determination letter dated March 30, 2020. 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 March 31, 2020, counsel appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated April 13, 2020. Counsel provided additional information dated May 4, 2020.

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 July 2019 through December 2019. The patterns of transaction characteristics indicative of trafficking are:

- Multiple transactions were made from individual benefit accounts within a set time period.
- Large transactions based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

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

- My client denies any involvement in any act that would result in Trafficking. Such charges are unwarranted and unjustified in that they do not cite any prohibited conduct.
- There is no evidence of any violation other than occasional multiple transactions by the same customers within a short time frame. This is not a prohibited act under the SNAP regulations.
- My client runs a well-stocked and managed grocery store in a highly transited part of Paterson, which has resulted in a successful business. The owner should not be punished or penalized for running a successful business.
- The alleged illegal transactions here are customary and typical for a SNAP customer in the area. The grocery store is located next to a major homeless shelter named Eva’s Village and the county Superior Court is only a few blocks away from the grocery store.
- The customers that come from Eva’s Village have limited means of transportation, and as a result transit the grocery store upwards of several times per day at times.
- The Grocery is always well stocked with a variety of products that caters well to the nearby clientele. The area happens to be quite impoverished and the customers seek the products that this grocery store offers.

- My client has complied with all SNAP requirements and has not committed the act of Trafficking. The Grocery has an employee policy manual, provided its employee with a SNAP regulation handout ,and directed their employee to watch the SNAP required training video.
- I only have one employee who has been working for me since July 2018.
- Because a large number of the customers from the shelter have children, they usually buy extra baby formula, Pedialyte, rice, oil, juice, amongst other goods.
- The typical SNAP customers that transit tend to visit the grocery on average two to three times per day and consume all their SNAP benefits within one to two days.
- The costs of groceries have been getting more expensive and just a few items purchased at the Grocery **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- SNAP clients comprise approximately 50% of the revenue generated by R&M Grocery. Having this privilege revoked will mean that I could no longer continue to operate this grocery. This will in turn affect my livelihood as I depend on this business to earn a living.
- I request that you reconsider the charges raised against me so that I may continue to serve my community with a business that is embraced by my customers. I have not violated any SNAP regulations and seek to have these charges against me reconsidered and dismissed.
- The grocery service offered is highly valued in the community. The Respondent is geographically situated in a manner that gives it ideal access to customers from one of the largest shelters in the county. Most of these patrons are SNAP customers that rely on this business for food products purchased daily.
- See signed affidavits by 12 customers that shop at the Grocery on a regular basis.

Counsel provided an owner affidavit, an employee affidavit, a flyer about the referenced homeless shelter with a map of its location, an employee manual, an employee acknowledgment of receipt of the manual, a SNAP video training document signed by an employee in July 2018, copies of warning posters at the entrance to the establishment and inside the store, photographs of store stock, a few cash register receipts, a copy of the USDA training document in Spanish, and twelve customer affidavits.

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 147 transactions in 55 sets conducted by 30 unique households (HHs). The onsite FNS-contractor store visit report supports that Appellant is a convenience store. Staple and accessory food items were displayed with no advertised meat/grocery bundles or package deals. The store sells made-to-order sandwiches, and meats/cheeses by the pound. No price list was available, nor can prices be discerned from the onsite store photos. The staple food

stock included a selection of canned and packaged goods, bread, pasta, fresh produce, a variety of canned/fruit juices, and some frozen foods.

The checkout area is via a small window fronted by a reach in freezer that does not afford much space to set numerous items for processing that might total to high dollar amounts. There was one handbasket noted in the report, and no shopping carts available for customers to assemble large numbers of items for purchase. No optical scanning tool was noted. The store does have an area that had additional non-staple foods in storage. The onsite store visit report indicates the store did not accept telephone orders, and did not offer delivery service. The store stocks many nonfood items such as: lottery tickets, tobacco products, health and beauty aids, cleaning supplies, paper goods, automobile products. and miscellaneous items such as large candles.

The data shows that there are more than one hundred other authorized retailers within a one mile radius of Appellant including: three supermarkets, three super stores, 40 other convenience stores, four large grocery stores, five medium grocery stores, and eight combination stores. Thus, there are numerous other shopping options located within a reasonable distance of Appellant, which likely had comparable or better staple food stock, and comparable or possibly better prices than Appellant. Nevertheless, Appellant had more data sets flagged on this Attachment than two nearby convenience store comparators that each had only one data set flagged on this scan for the same timeframe. Retailer Operations expected that other nearby convenience stores would have a similar number of flagged data sets as they would likely be frequented by the recipients who made transactions at Appellant. Thus, Retailer Operations determined that the owner's reply failed to explain the unusual patterns of SNAP redemptions listed on this Attachment and Attachment 2.

Retailer Operations determined that Appellant's transaction activity was unusual and suspicious. The data supports that 40% of the HHs listed on this Attachment used SNAP benefits at a supermarket or super store within two days of making a transaction(s) at Appellant. Thus, recipients did access and use larger authorized retailers to transact benefits. Retailer Operations noted that the cited homeless shelter is located about 450 feet from Appellant. There is also a authorized medium grocery store that based on Internet mapping is 485 feet from the homeless shelter. Based on photos in the record, this medium grocery store has a wider variety of eligible SNAP staple foods than Appellant. Retailer Operations found it unlikely that homeless recipients would have the ability to store eligible foods in the high dollar transaction amounts listed in Attachment 2, or the transactions totaling hundreds of dollars within set time periods listed in this Attachment. As such, the contention that shelter recipients were transacting large dollar amounts at Appellant was not more convincing to Retailer Operations than that the Attachments depict patterns of trafficking.

No vendor invoices were provided to support that Appellant stocked adequate eligible foods to cover or approach its SNAP redemptions for the review period. No federal or state business tax returns, or business banking statements were provided. The few cash tapes provided were not itemized to show what items were purchased, showing only department coding with prices.

Attachment 2: Listed are 475 transactions conducted by 115 unique HHs for amounts that exceed the average transaction amount for the same store type, in the same state, by three times

or more. Appellant had more flags on this Attachment as compared to two nearby same type convenience stores that had 110 and 29 flags respectively. The data shows that 69.5% of the HHs flagged conducted a transaction(s) at a super store or supermarket within two days of making a transaction(s) at Appellant. Thus, most recipients had access to and did make transactions at other larger type authorized stores.

Retailer Operations determined that it would be unusual for a SNAP household to purchase baby formula, Pedialyte, and juice with SNAP benefits at Appellant, as households that participate in SNAP are eligible to participate in the Women, Infants and Children (WIC) program. WIC provides participants with vouchers for baby formula and other staple items, such as orange juice and cereal. Retailer Operations was more convinced that WIC participants would likely purchase their infant formula, as well as other expensive staple goods, with their WIC benefits than with SNAP benefits at this convenience store.

Retailer Operations reviewed the two cash register receipts advanced, and noted that neither receipt indicates what was supposedly bought, listing only department information and the prices. Both receipts are dated in February 2020, outside of the review period. They also show “cash” on the bottom of each, rather than EBT sale. Retailer Operations looked at the SNAP EBT data for these two transaction amounts on the dates seen, and neither transaction amount could not be found. Retailer Operations noted that the first receipt shows an item purchased at 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the store visit report, there was no single eligible item priced at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in inventory at Appellant. The highest priced item at the time of the onsite visit was infant formula listed at \$23.99.

Appellant had 5 U.S.C. § 552 (b)(6) & (b)(7)(C) higher SNAP dollar volume amount than authorized convenience stores in Passaic County for the same timeframe. Appellant’s average SNAP transaction amount was 33% higher than the average transaction amount of convenience stores in the same County. Given the stock and physical characteristics of Appellant, Retailer Operations found it more likely than not that the large dollar transactions were indicative of trafficking.

The data supports that there are authorized stores nearby that had comparable or better staple food stock, and that households listed on the Attachments did utilize these other retailers. Retailer Operations conducted a review of several HHs’ shopping patterns at Appellant. The data shows that HHs made transactions at supermarkets and super stores on dates proximate to or on the same date at Appellant, while conducting lower dollar SNAP transactions at these larger stores. This is suspicious, particularly as Appellant carried limited staple foods.

Retailer Operations reviewed the shopping data for the 12 signed affiants that claimed to use their SNAP benefits at Appellant. Retailer Operations could not locate two of the names submitted in the New Jersey administrative terminal, and two households had names that exactly matched with other names in the database, so the specific HH affiant could not be determined. The New Jersey admin terminal does not provide any variation of an address to permit Retailer Operations to attempt to match names by other variables. Two HHs that provided statements had no SNAP transactions during the review months.

- The 5 U.S.C. § 552 (b)(6) & (b)(7)(C) household claims it was in the store up to three times a day. This household name could not be found in the New Jersey admin terminal.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – This household claims is frequented the store 3-4 times a week. A search for this individual’s name under two different spellings could not be found in the New Jersey admin terminal.
- There were 37 names of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in the terminal. The New Jersey admin terminal does not permit a searches to refine the search results.
- There were 14 names of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that matched in the New Jersey admin terminal. As a result, the HH could not be specifically matched to its shopping history.
- Retailer Operations used Google translate on 5 U.S.C. § 552 (b)(6) & (b)(7)(C) statement. This individual was found in the New Jersey admin terminal, but the last access date for SNAP benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C) This household could not be found using benefits during the review period.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was found in the New Jersey admin terminal, but Retailer Operations could not find that she used benefits during the review period. The New Jersey admin terminal showed a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) balance for SNAP benefits.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) made transactions at Appellant during the review period. The highest SNAP transaction amount conducted at the firm during the period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). She stated in her affidavit that this store is a convenient location when she cannot get to a supermarket. Of the 30 SNAP transactions the HH conducted during the review period, only two transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the low dollar amounts transacted, the household appears to have used the store for convenience items, not its full grocery needs.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to reside at the homeless shelter. During the review months, she made of 13 total SNAP transactions, ten at Appellant, all for the 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The household did not have any transactions flagged on the Attachments.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated she used her SNAP benefits daily at Appellant for sandwiches and juices. She completed 91 SNAP transactions during the review period at 16 different authorized SNAP retailers. She made 29 transactions at Appellant, and all but two transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The highest dollar transaction by this HH made at the firm was for 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which was its only flagged transaction on Attachment 2.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C) made 23 transactions at the store during the review period; 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The highest dollar transaction was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The statement states the household lives at the homeless shelter, and this is the only store allowed after curfew to purchase quick food items like bread and milk.
- The HH of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated the store treats them nice and helps them out since they receive food stamps. The most that the HH transacted during the review period was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Later that same date, the HH transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store.

- The household of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) stated it lived a block away from the store, and that Appellant was their go-to store for everything. During the review period this household used their benefits at 22 other SNAP authorized retailers. The most that was spent at the firm was 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is flagged on Attachment 2. Retailer Operations noted that this household used 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of its benefits at a homeless shelter 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The matched affidavits did not convince Retailer Operations that the affiants did not engage in benefit trafficking with the retailer. Some of the affiants shopped at better-stocked stores on or proximate to the day they conducted flagged transactions at Appellant. Retailer Operations found this suspicious in that the typical convenience store did not appear to offer stock that could not be acquired at other authorized stores. Retailer Operations noted that Attachment 2 includes transactions by 115 different households. As such, the affiant evidence was not more compelling as to likely legitimate SNAP transactions at Appellant as compared to the indicators of trafficking at the store.

Retailer Operations concluded that the evidence submitted did not adequately explain the transactions in the Charge letter. Based on the patterns of the transactions listed in the Charge letter, the unverified volume of eligible food inventory, the large number of authorized stores in the area, the shopping patterns of households, and the high SNAP dollar volume redeemed at the store, Retailer Operations determined that it was more likely than not that the transaction patterns were the result of trafficking, and not the legitimate sale of eligible foods.

On review it is found that while some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented to support this argument. No vendor invoices of eligible items acquired in inventory that might cover or approach Appellant's SNAP redemption volume for the review period were provided. The owner advanced no itemized cash register sales tapes for the review months. No listing of eligible foods with pricing was submitted. No federal business tax returns or state tax filings were provided, and no business banking statements were submitted. Only 50% of the recipient affidavits offered as evidence could be matched to SNAP data for the relevant period. The regulations at 7 CFR § 278.6(a) 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, and that 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.

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. 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. He has not met the burden of supporting by a preponderance of the evidence, that the administrative sanction should be reversed.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) detail the four criteria for a firm's eligibility for a trafficking CMP in lieu of permanent disqualification. The listed criteria are as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owner did not provide evidence for consideration for a trafficking CMP during the required timeframe. Retailer Operations avers that Exhibits A, B, and C were originally received with counsel's written reply to the Charge letter. Retailer Operations did not consider these items since they were postmarked after the regulatory timeframe for a substantial evidence submission for a trafficking CMP. According to 7 CFR §278.6(b)(1), this information and evidence shall be submitted within 10 days. The record documents that Appellant received the Charge letter on February 10, 2020. Therefore, it had until February 20, 2020 to provide evidentiary documentation for a trafficking CMP. While the submitted documentation is again acknowledged under administrative review, it is not eligible for consideration for a trafficking CMP as the documents were submitted after the regulatory deadline.

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 households' shopping analyses that provided evidence that the identified transaction patterns, as provided in the Attachments, had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on this data, and the review of the evidence presented by the owner as to the legitimacy of the transaction patterns, the preponderance of the evidence in the record supports that SNAP violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. The owner did not submit substantial information to support consideration of a trafficking CMP within the regulatory time frame. The decision to impose a permanent disqualification against Appellant is herein 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 delivery 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

June 17, 2020