

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

**Rajeshree Grocers,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0198532**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is not sufficient evidence to support the Retailer Operations Division's determination to permanently disqualify Rajeshree Grocers from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). Therefore, the permanent disqualification decision is reversed.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Rajeshree Grocers.

**AUTHORITY**

7 U.S.C. § 2023 and its 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."

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from September 2016 through February 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- The majority or all of an individual recipient's SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

## **CASE CHRONOLOGY**

The agency's record shows that FNS initially authorized Rajeshree Grocers for SNAP participation as a combination grocery/other store (eligible under Criterion B) on October 13, 2005. In a letter dated April 14, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of September 2016 and February 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated April 19, 2017, the Appellant, through counsel, responded to the charge letter, generally stating that no fraud had been committed by the firm. The Appellant stated that the allegations of trafficking were not true and that the charge letter offered no evidence of unusual, irregular and/or inexplicable activities. The Appellant then provided a detailed explanation for each charge letter attachment and stated that the firm is very careful to follow all SNAP rules.

In support of its response, the Appellant provided a number of documents, including point-of-sale receipts; a listing of all expenditures for 2016; a spreadsheet of the firm's total sales; and copies of IRS tax form 1099-K, showing gross payments from third-party network transactions for the year 2016.

After considering the Appellant's reply to the charges as well as the documentation it submitted, the Retailer Operations Division determined that the Appellant's explanations and evidence were not sufficient to justify the unusual transaction patterns listed in the charge letter. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated May 11, 2017. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked May 18, 2017, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

## STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence

which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

## CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

*... 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 § 278.6(c) states, *inter alia*:

*The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.*

7 CFR § 278.6(a) 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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....***  
[Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

*FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.*

7 CFR § 271.2 states, *inter alia*:

*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 § 271.2 states, *inter alia*:

*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 § 278.6(b)(1) states, *inter alia*:

*Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...*

7 CFR § 278.6(b)(2)(ii) states, *inter alia*:

*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(b)(2)(iii) states:

*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.*

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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of 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 the 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...*

7 CFR § 279.4(a) states, *inter alia*:

*Upon receipt of a request for review of administrative action, the administrative action shall be held in abeyance until the designated reviewer has made a determination. However, permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in 278.6(b)(2) of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period...*

### **APPELLANT'S CONTENTIONS**

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant believes that there may be a misunderstanding regarding the Retailer Operations Division's determination letter. The letter states that the firm was not eligible for a civil money penalty. However, the firm did not request a CMP because it did not commit any trafficking. The Appellant also did not submit evidence of the firm's compliance and training program because there have been no SNAP violations. To request a CMP and represent that a revised compliance policy has been established and implemented would be disingenuous.
- The firm's original compliance policy has been 100 percent effective, as the firm has never committed a single violation of SNAP. However, the Appellant continues to modernize its operations, including installing video cameras and retaining itemized cash register receipts to reflect the exact merchandise purchased.
- Appellant's counsel then refers to its original response to the charge letter, dated April 19, 2017, which provides evidence and a point-by-point explanation of its contentions in this matter.

To support its contentions, the Appellant included the following documentation, which was not previously supplied to the Retailer Operations Division:

- An accounting ledger from April 2017 through May 14, 2017, demonstrating that the Appellant owner operates a large volume grocery store.
- Two advertisements, dated May 12, 2017, published in *Desi Talk*, a weekly online newspaper directed at Indian-American readers.
- A Sales and Use Tax return document from the Illinois Department of Revenue for the period April 1, 2017 through April 30, 2017.
- A financial statement of Rajeshree Foods & Video Inc., showing that the firm's gross profit for calendar year 2016 was 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- Appellant claims that given how hard it is required to work and how thin the store's profit margins are, it would never jeopardize its participation in SNAP by committing any violations. Appellant further argues that the store would not be able to continue to operate if the firm's authorization is not reinstated.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on questionable SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking?

On March 3, 2017, an FNS contractor conducted a store visit at Rajeshree Grocers to observe the nature and scope of the firm's operation, stock and facilities. This store visit information was used by the Retailer Operations Division to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. It is the determination of this review that the Retailer Operations Division wrongly undervalued the evidence obtained from this store visit.

For example, based on the types of food available, the store is clearly geared toward customers of Indian and Pakistani backgrounds. Photos of the store indicate that the firm was filled with eligible food items, including dozens of large bags of rice and flour. Additionally, the store had approximately 10 shopping baskets (some with wheels), and roughly 10 shopping carts (several were parked outside in front of the store). The store's shelves were fully stocked and gave a distinct appearance of robust food sales. A 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the reauthorization application, 95 percent of the firm's sales come from the sale of staple foods. A review of the store visit photographs supports this estimate, as there are very few nonfood items in the store. If not for the absence of meat items, this firm would normally be classified as a medium grocery store.

When this store visit information is combined with the receipt evidence provided by the Appellant – showing that non-SNAP customers also make frequent and very large purchases at the store – it gives a strong impression that trafficking is not likely the lure that the Retailer Operations Division believes it to be.

It is also noted that on three separate occasions (2008, 2009, 2014), the Food and Nutrition Service conducted undercover investigations at Rajeshree Grocers to see if the firm would commit SNAP violations. However, on all three occasions the investigations were negative, meaning that no violations occurred. This gives adds weight to the firm's position that trafficking was not occurring at the store.

It is impossible for this review to definitively conclude that trafficking did not, at any point, occur at the Appellant firm; nor would it be possible to do so in a case based on inconsistent redemption data. However, a determination of permanent disqualification must be supported to such a degree as to conclude that trafficking is the most plausible explanation. In light of the evidence and information provided by the Appellant in comparison to that which was provided by the Retailer Operations Division, it is the determination of this review that there are other legitimate theories, besides trafficking, for the unusual transaction patterns listed in the charge letter.

## **CONCLUSION**

It is the determination of this review that the Appellant has met the burden of proving, by a preponderance of the evidence, that the transactions listed in the charge letter were likely legitimate purchases of eligible food. Therefore, it is the conclusion of this review that it is more likely true than not true that trafficking was not committed by the Appellant firm. As such, the determination to impose a permanent disqualification against Rajeshree Grocers is hereby reversed.

## **RELEASE OF INFORMATION**

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.

JON YORGASON  
Administrative Review Officer

November 3, 2017