

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

**Raven's Grocery Store,**

**Appellant,**

**v.**

**Case Number: C0214337**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record indicates that Raven's Grocery Store (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retail food store in the SNAP, as imposed by the Retailer Operations Division (Retailer Operations), was appropriate.

**ISSUE**

The issue accepted for review is whether Retailer Operations took 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 FNS.

**CASE CHRONOLOGY**

By Charge letter dated February 7, 2019, Retailer Operations informed the owner that FNS had compiled evidence that Appellant had violated the SNAP regulations based on analysis of electronic benefit transfer (EBT) transactions that establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

Appellant replied to the Charge letter by letter dated February 14, 2019. Retailer Operations issued a Determination letter dated March 5, 2019. This letter informed the owner that Appellant was permanently disqualified from the SNAP in accordance with Sections 278.6(c), and 278.6(e)(1), of the regulations.

Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the regulations. The firm was deemed not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP regulations.

By letter dated March 13, 2019, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated March 22, 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 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 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 Section 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 in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 271.2 states: "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(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(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 § 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 the evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the period of July 2018 through December 2018. This involved two patterns of transactions indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions presented, including any not specifically recapitulated here.

- I am not agreed [sic] all allegations placed upon us.
- Our employees have been strictly trained and monitored to make sure that all of their actions and decisions strictly coincide with the regulations of the USDA.
- My employees and I use the SNAP facility as a proper channel to provide our customers with USDA approved foods to meet their everyday needs.
- The allegations, selling non-food items and trading cash for SNAP benefits are not correct.
- Many of the families who reside in our service area are beneficiaries of the SNAP program. Preventing us from serving them would be a major inconvenience and pain for the community as a whole.
- This program is a large source of income for our business, it will be difficult for us to meet daily expenses and stay in business if we are not allow [sic] to have SNAP.
- We request that the records of the USDA be rechecked and verified, and also we request to be excused if any mistakes were made on our part.

## ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

**Attachment 1:** Listed are 64 transactions in 26 sets of two or more transactions conducted by 17 different households (HHs). According to the record, there are 20 authorized stores within a half mile radius of Appellant; including two supermarkets. The data shows that 59% of the HHs listed made a transaction(s) at a large grocery, supermarket or super store within one day of making a transaction(s) at Appellant, and within two days, 71% of the HHs listed, made SNAP transactions at larger store types. Thus, the data supports that the recipients had access to, and did transact benefits at other authorized retailers.

Retailer Operations compared Appellant's number of transactions flagged on this Attachment to two nearby same type stores. Appellant had 26 data sets flagged as compared to 1 set and zero at the other stores. This is irregular.

The owner provided to evidence in support of his contentions. No itemized cash register tapes were advanced. No recipient affidavits were provided to attest to shopping patterns at the store. No business banking records were provided. No federal or state business tax returns were advanced. No vendor invoices supporting the acquisition of eligible food inventory were provided.

**Attachment 2:** Listed are 377 transactions conducted by 165 different households. T5 U.S.C. § 552 (b)(7)(E). This is unusual and indicative of trafficking.

The record shows that Appellant had more SNAP transactions in higher dollar ranges than the store type averages for the same dollar ranges. For example, Appellant had 195 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), while the average number of transactions in this dollar range for the same store type during this period was 24. Similarly in the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) dollar range, Appellant conducted 54 SNAP transactions while the average number at the same store type in the timeframe was 8.4 transactions. This is unusual.

The store visit report does not indicate that Appellant sold any specialty items. The shopping histories in the record confirm that households that made SNAP transactions at Appellant also conducted transactions at large groceries, supermarkets and superstores. As such, recipients did use benefits at other authorized retailers. Retailer Operations' review of the store visit photographs revealed that there were no eligible foods at Appellant that could not be obtained at a larger store in the area.

The owner contends that a SNAP disqualification will have a negative financial impact on Appellant's business. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty

assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow the owner to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges.

The retailer provided no price list of eligible foods at the store. The owner did not submit purchasing invoices to help confirm the dollar volume of eligible food stock to support Appellant's SNAP redemptions. No evidence was advanced to support the owner's denial of trafficking. The burden to disprove trafficking rests with Appellant. While some transactions flagged may be legitimate exchanges of eligible foods for benefits, insufficient evidence was advanced to support this contention. Permanent disqualification is warranted on the first occasion of trafficking. An Appellant that seeks to set aside an Agency sanction must focus its probative efforts on providing a preponderance of evidence that the transaction activity cited is not due to SNAP benefit trafficking. Appellant has not met its burden.

### **CIVIL MONEY PENALTY**

To be considered eligible for a CMP, a firm must establish by substantial evidence, its fulfillment of each of the criteria under 7 CFR § 278.6(i). Retailer Operations determined that Appellant did not meet the requirements to qualify for a CMP in lieu of permanent disqualification.

Appellant did not provide substantial documentation, as required by the regulation, for consideration for a CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP according to the terms of Section 278.6(i) of the SNAP regulations.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. The review of all the evidence does not support by a preponderance, that legitimate SNAP purchases, more likely than trafficking, accounted for the transactions listed on the Attachments. Upon review of all of the evidence in this matter, it is determined that it more substantially supports a conclusion that the SNAP transaction activity at Appellant was due to SNAP benefit trafficking. Thus, based on the discussion herein, 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. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

April 30, 2019