

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

**Rocky's Discount C Store,**

**Appellant,**

**v.**

**Case Number: C0210679**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that the Rocky's Discount C Store (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 August 22, 2018, 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 August 30, 2018.

Retailer Operations issued a letter dated September 4, 2018, to counsel wherein it requested four items and any other documentation for consideration. An email from Retailer Operations' staff to counsel confirms that while his response stated that inventory records and sales receipts were included, they were not provided. The record indicates that there was no response by counsel to Retailer Operations' letter, email, and phone call regarding the invoices, sales receipts, and the household statements.

Retailer Operations issued a Determination letter dated September 12, 2018. 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 September 16, 2018, counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated October 5, 2018.

### **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 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 February 2018 through July 2018. The patterns of transaction characteristics indicative of trafficking are:

1. An unusual number of transactions ending in a same cents value.
2. Multiple transactions made from individual benefit accounts within a set time period.
3. The majority or all of individual household benefits were exhausted in unusually short periods of time.
4. Excessively large transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

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

- My client denies any improper activity with any of the charges of SNAP trafficking.
- My client had previously develop and implemented a prevention and compliance SNAP violations policy. A copy is attached.
- The policy was implement at the beginning of spring of 2018. Rolling staff meetings were held and current staff acknowledged they were present and understood the policy.
- New hires were instructed on the policy and it is posted in the store.
- The owner, a full time teacher, handles the buying and procurement functions and leaves other functions to her management and frontline employees.

- The nearest traditional grocery stores are several miles away and customers shop there out of comfort and convenience.
- Some customers purchase items in bulk including energy and sports drinks.
- Some customers frequently make larger purchases.
- I was retained to conduct a thorough review of the store's compliance issues on a whole host of matters; including the SNAP benefits program compliance (See Exhibit 2).

Four signed statements dated in March and April 2018 were advanced regarding Appellant's SNAP violation prevention policy. No Exhibit 2 was provided with the request for administrative review. Initially, counsel provided written customer statements, and one photo of the store stock.

## 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 75 transactions ending in a same cents value of 99. The report from the onsite store visit conducted May 22, 2018, states that Appellant did not round transaction totals up or down, and most prices ended in x9 cent values. The three highest priced items ended in values of 99, 33, and 00 cents. Signage on the coolers show soft drinks and juices priced at \$1.19 or 2/\$3.00, and novelty ice creams are labeled with prices ending in x9 cent values. When there are a disproportionate number of transactions that end in a same cent value than would be expected based on store pricing information gathered from the onsite store visit, it appears that these transaction amounts are contrived. Therefore, in the absence of compelling evidence to the contrary, this pattern is indicative of trafficking.

Contentions:

- Transactions ending in \$.99 represent legitimate purchases as these were eligible bulk items including energy drinks and/or prepared meals.
- They end in .99 because the store is unable to charge taxes on the sales.

The owner did not furnish cash register tapes to support her contention of legitimate sales. Appellant provided no pricing information of eligible SNAP items. No purchase invoices that could be used as evidence of bulk sales were submitted. The clerk that participated in the store visit inventory stated that the food service area proximate to the store is a separate business. Hot prepared foods are not eligible to purchase with SNAP benefits. Appellant has the burden to provide relevant evidence to rebut the trafficking charges.

**Attachment 2:** Listed are 127 transactions in 34 sets conducted by 21 unique households (HHs). **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:

- Certain customers would often shop at the store as soon as their benefits would hit their account and they would conduct a substantial amount of food shopping at that location.
- Back-to-back timing of purchases can be attributed to the nature of the goods bought and the individual desire to make separate purchases.

The data confirms that there are at least 11 authorized stores within a one mile from Appellant, including eight other convenience stores, one large grocery, and two super stores. Within two miles of the store there are more than 50 other SNAP authorized retailers. The data supports that 86% of the HHs listed on this Attachment shopped at a large grocery, a supermarket, or super store within one day of making a transaction(s) at Appellant. Thus, recipients had access to and did use other larger 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 within two mile of Appellant. Appellant had 34 flagged data sets while the three other convenience stores each had zero flags. Thus, Appellant's activity was unusual and suspicious.

The owner provided nine customer statements regarding shopping behavior at the store. These formatted statements did not include any SNAP ID information. The statements were written on a copied form, and do not indicate whether food purchases were made with SNAP benefits, or whether the dollar amounts, stated as expended at Appellant, were only for SNAP eligible foods. Sixty-six percent of the statements list ineligible items purchased at Appellant such as: cigarettes, clothes, cowboy hats, socks, lottery, household goods, beer, and burgers. Hot foods are not allowed for purchase with SNAP benefits.

The record shows that on September 7, 2018, Retailer Operations' staff telephoned the attorney to request additional information regarding these statements, such as SNAP account numbers, card numbers, addresses, or other identifying information. The record shows there was no response to the voicemail request for information. Nevertheless, Retailer Operations was able to identify four HHs in the state administrative terminal. The Retailer Operations' staffer determined that no SNAP transactions were made at Appellant by any of the four individuals during the review period. It is possible that the individuals were cash or credit customers at Appellant. Retailer Operations did not find that the customer statements disproved the trafficking charge.

No itemized cash register tapes to support eligible food sales at Appellant were provided. No vendor invoices to support the acquisition of SNAP eligible foods were advanced to support the volume of SNAP redemptions during the review period. No business federal tax records or state sales tax reports were advanced. No business banking records were offered to support the owner's contention that trafficking was not occurring at Appellant.

**Attachment 3:** Listed are 19 transactions in five sets whereby the majority or all of the individual households' benefits were exhausted in unusually short periods of time.

Contention:

- The store has customers who conduct a bulk of their monthly food shopping at the store which is local and supplies a variety of eligible items for SNAP purchase.

Appellant, a convenience store, stocks lottery, tobacco, a large volume of beer and wine, auto supplies and paper goods. Other non-food items include t-shirts, hats, men's shorts, socks, and boxers. Display cases hold tobacco accessories and pipes, pepper spray, and stun guns. Four gaming machines are located in the rear of the store. Accessory foods are seen in many of the store visit photos and limited staples foods are visible. The store visit photos show a few of the coolers were lightly stocked; a stand-alone freezer was empty and had built-up frost. Another chest freezer had two bags of ice that appeared to be frozen to the bottom of the chest.

Retailer Operations determined that Appellant had more transactions flagged on this Attachment's parameters than three other convenience stores located within two mile of Appellant. Appellant had 5 flagged data sets while the three other convenience stores each had zero flags.

Retailer Operations found it unlikely that SNAP customers could legitimately exhaust their benefits at Appellant. Retailer Operations concluded that if recipients were purchasing enough soft drinks and snacks to deplete their balances, there would be no logical reason to split the SNAP transactions into smaller amounts to be processed in short timeframes.

**Attachment 4:** Listed are 113 transactions conducted by 31 unique HHs for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. Eighty-seven percent of the households flagged on this Attachment conducted a transaction(s) at a large grocery, supermarket, or super store within one day of making a transaction at Appellant. Appellant had many more flags on this Attachment at 113, as compared to three nearby same type stores which had 20, 33, and 9 transaction flags respectively. Appellant had 56% higher SNAP dollar volume than same-type stores in the state, and an average SNAP transaction amount that was 27% higher than same-type state stores. This is unusual.

Contention:

- The purchases in this allegation represent bulk charges on eligible food items.

The onsite store visit report confirms that Appellant did not sell fresh meats, seafood, produce, or high-priced staple food items. Appellant has minimal counter space at the checkout area. The store report indicates there were no handheld baskets and only three shopping carts to gather items that might total to large dollar transaction amounts of eligible items. Nonfood, ineligible items included: tobacco products, automobile products, health and beauty aids, paper goods, cleaning products, and clothes. This convenience store offered no bundles or bulk deals that might entice recipients to expend large amounts of their benefits there. Retailer Operations found it more likely than not that these transactions are indicative of trafficking.

The record shows that the last SNAP redemptions recorded at Appellant during the review months were processed on July 11, 2018. Retailers involved in trafficking are known to slow or

stop their violative activities after having an unexpected USDA onsite visit. If a firm was not violating the regulations and the transaction data was the result of legitimate transactions, it is expected that there would be no changes in transaction patterns after a USDA inventory review.

In this case, total SNAP transactions dropped precipitously in July 2018 to 94, of which none were flagged. This trend continued in August 2018, with total SNAP transactions at Appellant numbering 96 with zero transactions flagged, up through the disqualification month of September, wherein 98 SNAP transactions were made with zero flags. During the months of February through June, Appellant had SNAP transaction counts of 246, 359, 294, 392, and 254, with flagged transactions in each month ranging from 21 to 64. This is irregular.

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 to back Appellant's SNAP redemptions were advanced. The owner provided no itemized cash register tapes for the review months. 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.

The evidence that Appellant violated the SNAP regulations is furnished in the Charge letter Attachments. SNAP transaction data is provided to FNS via each State's EBT processor on a daily basis in a single layout and format that is standardized nationwide. The EBT transactions are validated and loaded into a database for subsequent analysis. USDA has a system that scans all retailer transactions at the beginning of each month for the prior month. The system uses pre-defined criteria or patterns for potential fraud detection. Reports provide information on those stores and transactions meeting the pre-established criteria. While the system identifies a retailer for further investigation, the actual case of trafficking is made by Retailer Operations' staff on the basis that the transaction patterns cannot be explained by the store size, layout, inventory, and other factors.

Based on this empirical data, and in the absence of compelling evidence for such transaction patterns, a conclusion can be drawn, that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics are sometimes the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to provide evidence of the legitimacy of the questionable transactions cited. In this case however, Retailer Operations determined that the owner's contentions did not outweigh the evidence in the record, and it acted to permanently disqualify Appellant.

### **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. The owner failed to submit documentation

timely to show that he met the four criteria in order to qualify for a CMP. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

Upon review counsel provided some information regarding a SNAP violation policy. As stated in the Charge letter, information regarding a request for a CMP must be provided within ten calendar days of receipt of the Charge letter. The acknowledgement statements of a SNAP policy were all signed after the first month of the Charge letter review period. They are inadequate to meet the regulatory criteria for a 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 28, 2018