

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

Sac Express Mart,

Appellant,

v.

Case Number: C0202586

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Sac Express Mart (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

ISSUE

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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.”

CASE CHRONOLOGY

In a letter dated October 13, 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 during the months of March through August 2017. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant’s replies to the Charge Letter. By a letter dated November 7, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store

in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On November 17, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the **Food & Nutrition Act of 2008**, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...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(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & 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...** (Emphasis added.)

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, in part:

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, (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 §278.6(f)(1) states, in part:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR §278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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...

7 CFR §278.6(b)(2)(iii) states, in part:

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.

SUMMARY OF THE CHARGES

- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 1).
- In a series of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the majority or all of individual recipient benefits were exhausted in unusually short periods of time (Attachment 2).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter, in its written request for review dated November 17, 2017, and in subsequent correspondence, it was argued that:

1. Some transactions were conducted in short time periods in order to get rid of inventory.
2. The firm has reduced the area devoted to grocery items by 1000 square feet in order to convert the store to a smoke shop. A 17-door walk-in cooler and a four-door freezer have also been removed. Appellant put all grocery items on sale in order to discontinue them. Appellant has photographs, invoices and inventory in support thereof; Appellant sold most of its inventory in September 2017.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on September 5, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a

store inventory survey. This documentation reflected that the firm had very little checkout counter space, no shopping carts or baskets, very little staple food inventory (in fact would not have qualified to participate in the SNAP on the day of the visit) and appeared to operate primarily as a smoke shop; Appellant affirms that the store operated primarily as a smoke shop with very little staple food inventory. The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. This documentation reflects that the firm was a marginally-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of California during the analysis period was \$7.11, reflecting that large purchases are not routinely made in such stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In regard to contention 1 above, Appellant provides no sales or inventory records to substantiate the claim that the transactions were due to clearance sales. Moreover, the transactions at issue were conducted during the period March through August, 2017, whereas Appellant asserts it sold its inventory primarily in September 2017. The store visit was conducted on September 5, 2017; on that date there was very little grocery inventory in the store. Such does not explain the transactions contained in the ROD Office's Charge Letter. Moreover, the Charge Letter contained not only transactions conducted in relatively short time periods, but also balance-depleting transactions and excessively large transactions. In the absence of any documentary evidence supporting the clearance-sale assertion, it is not compelling in the face of the evidence of trafficking provided by the ROD Office.

With regard to contention 2 above, while the photographs reflect that the firm appears to have been converted from a convenience store to a smoke shop, no documentary evidence has been provided to explain the Charge Letter transactions, which are dramatically uncharacteristic of a convenience store. Appellant states that it has invoices and inventory records to support its contentions, but does not provide them.

While there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a marginally-stocked small grocery store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Moreover, the record further reflects that Appellant's number of repetitive transactions during the analysis period was multiple times that of five nearby SNAP-authorized stores (all convenience stores from within a one-mile radius of the Appellant firm). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the

Appellant firm was a typically-stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Attachment 2 contains instances in which SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week following benefit issuance. The likelihood that these transactions were the result of the legitimate sale of eligible foods only is extremely small. A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 79 percent of a household's allotment remains unspent. After seven days 41 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 79 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Depleting one's entire allotment in one or two days during the first week following benefit issuance, in a single large transaction or in a series of high cumulative transactions in a short period of time, especially in a marginally-stocked small store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to divert attention to signs of same. Similar to Attachment 1, Appellant's number of balance-depletions was multiple times that of five comparable firms within a one-mile radius.

Attachment 3 contains transactions multiple times the average SNAP transaction in a convenience store in the state of California during the analysis period; the number of such transactions is likewise multiple times that of five similar convenience stores within a one-mile radius of the Appellant firm during the analysis period. However, the firm's inventory did not support the activity.

The ROD Office notes that, at the time of the sanction decision, there were at least 26 SNAP-authorized stores within a one mile radius of the Appellant firm, including four super stores, three supermarkets, one large grocery, one medium grocery, one small grocery store, four combination grocery/other stores and 12 other convenience stores. The ROD Office conducted an analysis of customers conducting implausible transactions at the Appellant firm and found that all shopped at much better-stocked super stores and supermarkets on or about the same day, calling into question what they customers could obtain at Appellant's marginally-stocked convenience store that they could not obtain at the better-stocked stores. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated October 13, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a

¹ Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Final Report. Prepared by Mathematica Policy Research for the Food and Nutrition Service, USDA, February 2011.

civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that “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 (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty.” As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office’s decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30th day following Appellant’s receipt of this document.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant’s owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY
Administrative Review Officer

July 2, 2018