

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

**Sam's Grocery & Beauty Supply,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0210226**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Sam's Grocery & Beauty Supply (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Appellant in a letter dated July 2, 2019.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provides 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**

The USDA conducted an investigation of the compliance of Appellant with Federal SNAP law and regulations from October 2016 through May 2019. The investigation report documents that on October 20, 2016, October 27, 2016, February 10, 2017, June 30, 2017, December 5, 2017, March 1, 2019 and May 7, 2019, the owner committed SNAP violations and exchanged SNAP benefits for cash. The buying or selling of SNAP benefits for cash or consideration other than eligible food is trafficking as defined under 7 CFR § 271.2. As a result of evidence compiled from this investigation, the Retailer Operations Division informed the Appellant, in a

letter dated June 18, 2019, that it was charged with violating the terms and conditions of the SNAP regulations. The letter stated, in relevant part, that:

Your firm is charged with trafficking, as defined in Section 271.2 of the SNAP regulations. As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for the trafficking violation(s) ... is permanent disqualification.

The charge letter also stated that:

Under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.

In a facsimile dated July 2, 2019, Appellant, through counsel, replied to the charge letter and generally stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has originally participated in the SNAP program since 1992 and purchased the current location in 2004. Upon information and belief, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has operated Sam's Grocery & Beauty Supply without any prior SNAP violations and/or notices of non-compliance. For the past 15 years the grocery store has conducted thousands, if not hundreds of thousands of transactions during this time period. It is located in a section of Gary that would be considered a "food desert" where there are a few grocery stores in that area that serve fresh produce to the area residents. Appellant, through counsel, listed a number of local stores and the distance Sam's Grocery & Beauty Supply is from each of those stores. Appellant, through counsel stated that it has also been in compliance by having no health code violations filed against it by the City of Gary Health Department and provided a signed Affidavit from the Chief Health Inspector.

Appellant, through counsel, also stated that there are housing projects that are in the vicinity of the store. There is extreme poverty and crime associated with running the store. It appears that the USDA has focused on seven transactions in three years from 2016 to 2019. It is difficult to defend this claim without knowing as to what evidence the USDA has in its letter listing the seven alleged violations. Upon information and belief, the owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), had complied with watching the required videos produced by SNAP regarding requirements of the program. Likewise, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the manager of Sam's Grocery & Beauty Supply has also watched the SNAP requirement videos for the last five years. In terms of Sam's policy of safeguarding SNAP resources, upon information and belief, there was an oral policy to instruct other when dealing with the benefits. Sam's Grocery & Supply would request that it be eligible for a civil monetary penalty in lieu of permanent disqualification and that the SNAP program be continues during the pendency of this case.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated July 2, 2019. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR §

278.6(c) and § 278.6(e)(1). The determination 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. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP 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 violations of the SNAP.

In a letter dated July 12, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. The appeal was granted.

### STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving 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, might 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 and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). In particular, 7 CFR § 278.6(a) and (e)(1)(i) establishes 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 § 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 § 278.6(e)(1)(i) states, in relevant part, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2."

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*..." [Emphasis added]

7 CFR § 278.6(f)(1) states, inter alia: “FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm’s disqualification would cause hardship to [SNAP] households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices... A civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification.”

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(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.”

### SUMMARY OF THE CHARGES

During an on-site investigation the USDA conducted compliance visits at Appellant. The investigation report documents the following:

1. On October 20, 2016, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and some food items.
2. On October 27, 2016, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed 2 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and some food items.
3. On February 10, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and some food items.
4. On June 30, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed 2 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and some food items.
5. On December 5, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in cash and some food items.
6. On March 1, 2019, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash and some food items.
7. On May 7, 2019, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) completed a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits was accepted in exchange for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cash and some food items.

## APPELLANT'S CONTENTIONS

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

1. Sam's Grocery Beauty Supplies is in a location considered a "food desert" where there are a few grocery stores in that area that serve fresh produce to the area residents.
2. Sam's Grocery & Beauty has also been in compliance by having no health code violation filed against it by the city of Gary Health Department.
3. There have been thousands, if not hundreds of thousands, of transactions that have occurred since 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased Sam's Grocery & Beauty Supply over 15 year ago. It appears that the USDA has focused on seven transactions in three years, 2016 through 2019. It is difficult to defend this claim without knowing what evidence the USDA has in its letter listing the seven alleged violations.
4. In terms of Sam's policy of safeguarding SNAP resources, upon information and belief, there was an oral policy to instruct other when dealing with the benefits.
5. Sam's Grocery & Supply request that it would be eligible for a civil monetary penalty in lieu of permanent disqualification.
6. Although Sam's does not have any physical record of SNAP training for the owner or the manager, it is believed that both individuals have previously viewed the SNAP compliance videos for a number of years prior to this action. It could be argues that Sam's Grocery & Beauty Supply did have an effective means of a compliance policy due to the fact that of the thousands of transactions there were seven violations over a three-year period.
7. Sam's has never been advised by USDA of any violations prior to the pending matter.

Appellant provided google maps of local area stores, a July 25, 2018 Post-Tribune article entitled "With Food Insecurity an Issue, Some Organizations Try To Help", an article entitle "Your Health May Be Defined By Your Neighborhood", a signed Affidavit of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Chief Health Inspector, City of Gary Health Department, dated July 1, 2019, and an article from the Gary Housing Authority, an article from Indianapolis Police-Fire. Appellant also provided Z-Tape receipts from August 2018 through January 2019 as well as a number of purchase invoices and receipts from August 2018 through January 2019.

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

## ANALYSIS AND FINDINGS

Appellant, through counsel, does not specifically dispute that trafficking occurred in its store. Instead, Appellant, through counsel, submits that the store is located in a food desert, has no health code violations. Appellant, through counsel, submits a request for a review of the determination of eligibility for a CMP and claims that although there are no physical records of SNAP training for the owner or the manager, it is believed that both individuals have previously viewed the SNAP compliance videos for a number of years prior to the violations and it has established and implemented a compliant policy and program.

With regard to Appellant's contentions, Appellant was notified in the charge letter dated June 18, 2019, which stated the following: "The SNAP regulations also provide that, under certain conditions, FNS may instead impose a civil money penalty (CMP) in lieu of a disqualification of a firm for trafficking. The SNAP regulations, Section 278.6(i), list the criteria that you must meet in order to be considered for a CMP. **If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter.** If you do not request consideration for a CMP or are determined to be ineligible for a CMP, the permanent disqualification of your firm shall be effective on the date of receipt of the letter informing you of our final decision (SNAP regulations Section 278.6(c)."

It is important to note that, as owners of the store, Appellants are liable for all volatile transactions handled by store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food Stamp Act and the enforcement efforts of the USDA. In this case, the investigative reports indicates that the owner was involved in all seven trafficking transactions.

## CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Appellant was advised of this provision in the charge letter of June 18, 2019, which also advised that documentation of eligibility for that alternative sanction had to be provided within a specific time limit. Such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented ***prior*** to the occurrence of violations.

Appellant, through counsel, states that it had an oral policy to instruct others when dealing with SNAP benefits and although it does not have any physical records of SNAP training for the owner or the manager, it is believed that both individuals have previously viewed the SNAP

compliance videos for a number of years prior to the violations. Appellant failed to provide the required documentation to prove that it had implemented an effective compliance policy prior to the SNAP violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

As previously stated, 7 CFR § 278.6(e)(1)(i) reads, in part, "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." The law and regulations do not provide for a lesser period of disqualification for this violation.

Based on a review of the evidence in this case, there is no question that program violations did occur during a USDA investigation. All transactions cited in the letter of charges were conducted or supervised by a USDA Investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, including the exchange of SNAP benefits for cash, and in all other critically pertinent details. The decision to impose a permanent disqualification against Sam's Grocery & Beauty Supply is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. 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 you reside or are 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 (FOIA), 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.

Monique Brooks  
ADMINISTRATIVE REVIEW OFFICER

January 14, 2020