

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

**Shop N Go SK,**

**Appellant,**

**v.**

**Case Number: C0239637**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the final decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a civil money penalty in the amount of **5 USC § 552 (b)(6) & (b)(7)(C)**, in lieu of a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), was properly imposed against Shop N Go SK (Appellant) by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6 in its administration of the SNAP, when it assessed a civil money penalty in lieu of a permanent disqualification against Appellant.

**AUTHORITY**

7 USC § 2021 and the 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.”

**CASE CHRONOLOGY**

In a letter dated December 7, 2020, the Retailer Operations Division charged 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 April 2020 through September 2020. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges by letter dated December 17, 2020. Appellant, through counsel, denied the allegations and explained that the transactions were for eligible food items only. Appellant submitted additional documentation on December on December 21, 2020, in support of its request for a civil money penalty.

After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated January 7, 2021. The determination letter informed Appellant that it was eligible for a trafficking CMP because Appellant submitted sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP. The determination letter stated that the monetary penalty of **5 USC § 552 (b)(6) & (b)(7)(C)** was due 30 calendar days from receipt of the determination letter.

By letter postmarked January 12, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions 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 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 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) 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 USC § 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

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(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, . . .**” (emphasis added)

7 CFR § 278.6(e)(1) reads, in part:

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

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.

7 CFR § 278.6(b)(2) states, in part:

(ii) 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 as specified in § 278.6(i), 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).** [Emphasis added.]

(iii) **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. [Emphasis added.]

## SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from April 2020 through September 2020. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts within a set time period.
- There store conducted SNAP transactions that are considered large based on the observed store characteristic and recorded food stock.

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.

## APPELLANT'S CONTENTIONS

In its January 12, 2021, administrative review request, Appellant, through counsel, provided the following summarized contentions:

- Appellant does not refute the USDA's decision but simply asks to allow for a longer period of time to pay back the CMP.
- Most of the customers buy groceries for their entire household as would a customer at a grocery store.
- There have never been any SNAP violations since the start of the business and Appellant has never violated any laws.
- The owner and three employees were the only employees during the review period.
- The transactions are based on the sale of qualified merchandise.
- Appellant has developed an effective compliance policy.
- A photocopied booklet is provided to each of its employees and issues concerning EBT processing are addressed as they arise.
- The training program included reviewing the FNS handbook and calling either the USDA or the store owner if there are any questions.
- Appellant had a training program in place that included verbal training, in-store training, and providing a copy of the manual to all employees.
- The shortest time period between transactions in Attachment 1 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and appears quite legitimate.
- Eligible food items are purchased at wholesale at a high volume.
- The largest transaction **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, which is common in stores that sell a multitude of EBT items that can easily add up to that amount or more in a single transaction.
- Appellant's customer are not monetarily savvy and cannot be held to a standard that would compel them to shop at cheaper discount stores.
- The customers are sometimes bound by transportations issues or health issues.
- Appellant's customers are accustomed to paying higher prices that are offered in smaller stores such as this that do not have the ability to take advantage of economies of scale,

compared to stores such as 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

- Not being a large volume retailer such as 5 U.S.C. § 552 (b)(6) & (b)(7)(C), Appellant's business can only survive with higher mark-ups on its products since they do not focus on volume sales.
- Per unit sales must be highly profitable for them to stay in business.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

## ANALYSIS AND FINDINGS

### Store Visit

FNS authorized Shop N Go SK as a convenience store on April 25, 2018. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 25, 2020, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Shop N Go SK is approximately 1200 square feet, with an additional 800 square feet of storage outside of public view.
- The checkout space is small and limited and checkout occurs through a small area through a Plexiglas wall with an ice cream cooler in front.
- There were no shopping baskets or shopping carts for customer use.
- There were one cash register and one point-of-sale device.
- There was no fresh unprocessed meat or poultry.
- The only fresh produce were some heads of lettuce and tomatoes that were used for the hot and prepared food items.
- Dairy included milk, butter, and cheese.
- Other staple foods available for purchase were eggs, juice, rice, bread, beans, cereal, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included tobacco, alcohol, health and beauty products, automobile, and cleaning products.
- There was kitchen area that sold prepared and hot food.

The highest priced items noted were sausage - \$8.99 and \$7.99; corn oil - \$7.59, and 24 packs of water - \$6.99. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

## Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Charge Letter Attachment 1: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 30 sets of transactions conducted by 17 different households 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The second and third transactions in each set are too large to consist of forgotten items. The Retailer Operations Division determined that multiple households choosing to spend such large quantities of their SNAP benefits, broken up over time likely to avoid large transactions, is more likely than not indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division determined that it was unusual for households to spend such large amounts of SNAP benefits at a convenience store. The Retailer Operations Division reviewed the SNAP transaction activity of some of the households that conducted these transactions, including the household that conducted transactions #49, #50, #51, and #52, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. This household conducted a SNAP transactions at a super store on this same day, April 6, 2020, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This household does not appear to rely on Appellant for its grocery needs. The super store would have any of the items available for purchase at Appellant at more affordable prices. The Retailer Operations Division considered this an indicator of trafficking.

Appellant has not offered convincing evidence to show that the transactions listed in Charge Letter Attachment #1 were legitimate purchases of eligible food.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 122 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

Counsel explains that Appellant sells items of high value and submitted a price list in support of this contention. Eligible food items are purchased at wholesale at a high volume. However, the store visit report and the photographs from the store visit do not support this statement. The

highest priced items noted during the store visit were sausage - \$8.99 and \$7.99; corn oil - \$7.59, and 24 pack of water - \$6.99. Although Appellant submitted receipts, there was insufficient evidence of food purchased in large volumes.

The Retailer Operations Division also determined that Appellant conducted more SNAP transactions in each ten dollar range **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** than the average for convenience stores in Dallas County during the review period. Appellant conducted 34 SNAP transactions in the **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** range, whereas the County average was 7.78. Similarly, Appellant conducted 17 SNAP transactions in the **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** range whereas the average for convenience stores was 0.85 during the review period. The Retailer Operations Division considered this an indicator of trafficking considering Appellant's available inventory.

The Retailer Operations Division compared Appellant to two other similarly stocked convenience stores that were located nearby. The Retailer Operations Division determined that the transaction pattern of Appellant exceeded the two other convenience stores **5 U.S.C. § 552 (b)(7)(E)**

The data from these nearby stores show that the transaction patterns at the Appellant firm were unusual. The Retailer Operations Division reasoned that if these flagged sets of transactions could be explained by "household shopping patterns" for this local area, then similar shopping patterns would be seen at the other two local comparable stores. However, this was not the case.

Counsel explains that Appellant's customers are sometimes bound by transportation issues or health issues, for which reason some of them might only shop at this store as well. It is true that sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that there are 23 other authorized retailers located within a one-mile radius of Appellant including one supermarket and five super stores. One of the super stores is located 0.3 miles from Appellant which the Retailer Operations Division determined would be a seven minute walk or a three minute drive.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Shop N Go SK compared to their shopping patterns at other SNAP authorized stores. Despite access to better stocked stores, each of the other households conducted excessively large transactions at Shop N Go SK within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices. In fact, counsel acknowledges that Appellant charges higher prices than are offered at these larger stores. There is no compelling reason for customers to consider Shop N Go SK, as a first choice destination to fulfill large purchases of food.

## Invoice Analysis

During the initial determination, Appellant submitted 13 inventory invoices/receipts to the Retailer Operations Division. The Retailer Operations Division analyzed the invoices submitted by the firm. The Retailer Operations Division reviewed all of the invoices and determined that based on the inventory invoices submitted by the retailer, the firm did not purchase sufficient inventory to support their SNAP redemptions during the review period. Even with a 200% mark-up, SNAP redemptions exceeded the inventory purchased. There is not sufficient evidence that Appellant purchase sufficient inventory to support its questionable SNAP transactions during the review period.

## Customer Statement

With its reply to the charges, Appellant submitted one customer statement to the Retailer Operations Division. The statement was handwritten and contained the household name, EBT number, and address. The Retailer Operations Division reviewed the SNAP transaction history of this household. The Retailer Operations Division determined that this household did not conduct any of the flagged transactions at Appellant. Thus, Retailer Operations Division determined that the customer statement was not evidence that any of the transactions listed on the Charge Letter were for eligible food items only.

## Evidence

The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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, **evidence obtained through a transaction report under an electronic benefit transfer system . . .**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the



administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered insufficient evidence to prove that the transactions listed in the Charge Letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

### **CIVIL MONEY PENALTY**

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i). The Retailer Operations Division determined that Appellant met the criteria for a trafficking CMP.

Regulations at 7 CFR § 278.6(i) outline the steps for calculating the CMP amount. The CMP is based on the store's SNAP redemptions during the 12 months immediately prior to the firm being charged with program violations. Modifications to the CMP may occur only when there is an error in calculation or when the CMP exceeds the statutory limit. The calculation of the CMP in this case is as follows:

#### **5 USC § 552 (b)(6) & (b)(7)(C)**

In this case, the calculated CMP of **5 USC § 552 (b)(6) & (b)(7)(C)** is more than the agency sanction limit of \$59,000.00. The total penalty imposed is the lesser of these two amounts. Based on the information above, it is the determination of this review that a CMP in the amount of **5 USC § 552 (b)(6) & (b)(7)(C)** was properly assessed in this matter. Accordingly, a modification to the CMP is not appropriate. Whether or not the firm can afford such a penalty is not a consideration under the regulations.

### **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to assess a civil money penalty against Appellant of **5 USC § 552 (b)(6) & (b)(7)(C)** in lieu of a permanent disqualification from participating as an authorized retailer in SNAP is sustained.

In accordance with regulations at 7 CFR § 279.5(f), the determination of this review shall become effective 30 days after receipt of the decision. If the penalty is not paid within 30 calendar days the permanent disqualification for trafficking shall be imposed. Appellant was also advised in the letter of determination dated January 7, 2021, of the allowable methods of payment, the appropriate contacts for discussion regarding that payment, and of the requirement

at 7 CFR §278.1(b)(4) to post a collateral bond or irrevocable letter of credit in the amount of \$1,000 as a further condition for continued participation as an authorized retailer in SNAP.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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 owners 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, 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.

MARY KATE KARAGIORGOS  
Administrative Review Officer

March 16, 2021