

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

**South Park Mini Mart,**

**Appellant,**

**v.**

**Case Number: C0210238**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that the South Park Mini Mart (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 July 24, 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 responded to the Charge letter in writing August 1, 2018.

Retailer Operations issued a Determination letter dated August 8, 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 August 15, 2018, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated August 28, 2018. An additional letter dated September 21, 2018, was provided. This office emailed the address in the record for the store and granted an extension to October 18, 2018. This office called the owner on October 18, 2018 and left a voice mail to ensure that he knew any information was due.

### **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) reads: "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 May 2018. The patterns of transaction characteristics indicative of trafficking are:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. 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.

- I deny the averment of trafficking. Because of the criminal action alluded to in your letter, I must respectfully invoke my Fifth Amendment right not to be compelled as a witness against himself, US Const, Amend V.
- In the alternative, I would like to discuss this matter and find an amicable resolution.
- I believe a warning letter would not be a sanction, but a civil money penalty and disqualification are deemed to be sanctions.
- I am the sole shareholder of the corporation. My training and that of my husband and extended family was from the previous owner.
- We were told that EBT only allows us to sell food products appearing on a chart. We have not deviated from that policy. We have had no other training.
- I again deny the averment of trafficking as defined, after asking all my family members, none of us engage in any of those activities.
- We have tried to understand the data attached to the July 24, 2018 letter and how it is a violation. We do not understand it.
- I do not understand the \$47,340.00 penalty. My family does not have that sum of money.
- We asked Attorney Assad to call your office on September 20, 2018, you were not there.
- I do not know what to tell you or how to fix or change what we were doing.

- I ask if you can extend the time for me to provide information and find a lawyer to help me. There can be no harm since my ability to have EBT payments has been suspended.

## 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 59 transactions in 22 sets conducted by 20 unique households (HHs). Multiple transactions within a set time period are a method stores use to avoid high dollar transactions and are indicative of trafficking.

An onsite visit was conducted in June 20, 2018. The visit revealed that Appellant's staple food stock was limited and included canned and pre-packaged foods. The firm did not sell fresh meat, it did not have shopping carts and only one basket, and it has minimal counter space at the checkout area.

No itemized cash register tapes to support eligible food sales or vendor invoices to support the acquisition of SNAP eligible foods were advanced. The owner provided no recipient statements regarding shopping behavior at the store and offered no explanations or evidence to support his contention that trafficking was not occurring at Appellant.

The onsite report indicates there were no handheld baskets or shopping carts to assist recipients with the collection and movement of large volumes of items in the store that might total to high dollar amounts. The owner has not by a preponderance of the evidence demonstrated that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than the result of trafficking.

**Attachment 2:** Listed are 204 transactions for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. **5 U.S.C. § 552 (b)(7)(E)**. Appellant's average SNAP transaction amount was 74% higher than the County convenience store SNAP average amount. This is unusual.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented by the owner to support this argument. No vendor invoices of eligible items acquired in inventory to support 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 actual state tax filings were advanced, and no business banking statements were provided. 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.

## **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.

## **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record 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 a preponderance of evidence of the legitimacy of the transactions presented by Appellant, it is more likely true than not true 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 a judicial review of this decision. 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 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

October 31, 2018