

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

**Stampede Market & Grill #01,**

**Appellant,**

**v.**

**Case Number: C0208795**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence to support a finding that the permanent disqualification of Stampede Market & Grill (Stampede Market & Grill or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), 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 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 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 May 17, 2018, 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 November 2017 through April 2018. 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 May 25, 2018. Appellant explained that the unusual transactions were due to the sale of meat packages. Appellant provided a price list for these meat packages. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated May 30, 2018. The determination letter informed Appellant that 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 Appellant was not eligible for a trafficking CMP because 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.

By letter dated June 4, 2018, ownership appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a clear 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(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.]

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.

## **SUMMARY OF THE CHARGES**

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2017 through April 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- There were excessively large purchase transactions made from recipient accounts.

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 appeal request dated June 4, 2018, and subsequent correspondence dated June 29, 2018, Appellant provided the following summarized contentions, in relevant part:

- Appellant is located in the heart of the community.
- Appellant appreciates serving the community and many of its customers are SNAP recipients.
- Customers are able to purchase meat packages from Appellant.
- Appellant also sells a variety of groceries.

In support of its contentions, Appellant provided 62 invoices and a price list of items it sold.

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 Stampede Market & Grill as a convenience store on June 1, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 2, 2018, 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:

- Stampede Market & Grill is approximately 350 square feet, which includes a food preparation area.
- There were no shopping baskets or shopping carts for customer use.
- The store does not offer any promotional specials, packaged, or bulk items.

- The checkout counter was small and limited and occurred through a window.
- Customers did not appear to have access to the interior of the store.
- There was limited fresh produce including some potatoes, apples, oranges, and bananas.
- Dairy included butter, cheese, milk, and two cans of infant formula.
- Other staple food items included a limited selection of canned and packaged goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included tobacco, health and beauty aids, paper goods, and cleaning products.
- The store has an extensive hot food menu and outdoor seating.

The most expensive items noted during the store visit were Enfamil formula - \$15.97; pork steak - \$15.89; T-bone steak \$7.99; and New York strip steak - \$5.99. The store appeared to be a take-out restaurant with few staple food items available for purchase. 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 22 sets of transactions conducted by 14 households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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 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 photographs from the store visit show that is unlikely that SNAP customers would shop at Appellant multiple times during a short time frame, or purchase such a large volume of items. In addition, the fact that items are passed through a window upon purchase makes it unsuitable for conducting large transactions.

While there are legitimate reasons why a SNAP household may shop at a given store multiple times in a day, the repetitive transactions cited in Attachment 1 is not normal shopping behavior at a convenience store. The store did not provide any documentation that would explain how a convenience store with limited staple foods is legitimately conducting excessively large transactions multiple times during a short time period. In the absence of any other reasonable

explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

**Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 336 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's total SNAP redemptions and Appellant's average SNAP transaction amount during the review period were greater than the average for convenience stores in the county. The store photographs indicate that the store carries limited staple food stock. Appellant appears to be a drive-thru restaurant/convenience store with the majority of its sales coming from hot and prepared food. There is no compelling reason for customers to consider Appellant as a first choice destination to fulfill large purchases of food, or to make cumulative purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) resulting in large amounts. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant explains that the large transactions are due to the sale of meat packages. However, on the day of the store visit there was no evidence of meat packages for sale. In addition, the owner indicated that there were no meat bundles for sale. In addition, with the store owner's assistance, the highest priced items provided were Enfamil formula - \$15.97; pork steak - \$15.89; T-bone steak \$7.99; and New York strip steak - \$5.99. Meat items were more likely sold as a hot prepared food items. Appellant provided invoices to support its sales. Meat was not purchased in large quantities large enough to support the questionable large dollar transactions listed on this Attachment. The only items that were purchased in large quantities were chicken wings, which according to the store visit, the store had a special on hot wings.

The meat packages provided by the store owner list various items- ribs, hamburger patties, fish fillets, wings, pork steak, tenders, bacon, pork chops, T-bone steaks, fish fillets and popcorn shrimp. A review of the store photos do not show a significant supply of any of these products. Based on the store layout it appears that the majority of these products are used in the sale of hot and prepared food items. The Retailer Operations Division determined that the invoices submitted also do not support the sale of meat packages. For example, hamburger patties were included in many of the alleged meat packs; however there were no hamburgers purchased for the entire month of January. Thus, it is questionable how each of the large transactions were due to meat packages when the evidence does not support that Appellant carried the necessary stock to support multiple meat packages.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division considered this an indicator of trafficking.

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 are six other SNAP authorized stores within a one-mile radius of Appellant including two other convenience stores, two combination groceries, one supermarket, and one super store.

The Retailer Operations Division analyzed the shopping patterns of five households identified in the charge letter. All of these households had access to, and shopped at supermarkets and super

stores. However, despite this access to better stocked stores, each of the households conducted excessively large transactions at Stampede Market & Grill within one or two days of shopping at a supermarket or super store. It is unlikely that households would conduct large transactions at Appellant when these households had just visited or planned to visit larger stores with a better selection of staple foods including fresh meat and produce and likely better prices.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. While some households may have conducted legitimate transactions at Appellant, insufficient evidence was presented to support this argument. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

### **Invoice Analysis**

Appellant provided purchase invoices from the review period in order to show that the store had sufficient food inventory to justify its SNAP redemptions. The case record documents that the Retailer Operations Division thoroughly reviewed these purchase invoices to determine if they could support the store's actual SNAP redemptions during the review period. Appellant submitted 62 invoices; of which 26 invoices were dated during the review period.

The Retailer Operations Division determined that the majority of the invoices show items Appellant used for its prepared and hot and prepared food menu. It is important to note that the majority of the items listed on the hot food/deli menu would be SNAP ineligible because they are sold hot at the time of purchase. Even with a 500% mark-up (usual mark-up is 40%), the Retailer Operations Division determined that the submitted invoices do not support the SNAP redemptions for the months reviewed. Consideration also has to be given to cash and credit card sales.

### **Evidence**

The charge letter attachments are derived from transaction reports under the electronic benefit transfer system. Specifically, FNS uses a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. 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.

7 CFR §278.6(a) clearly states, in part, "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.]

Appellant must provide a preponderance of evidence 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 did not provide any compelling justifications for the transactions listed on the charge letter attachments. 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 did not 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, 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. 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**

The Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

## **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 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.

Mary Kate Karagiorgos  
Administrative Review Officer

October 3, 2018