

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

Star Market,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0203035

FINAL AGENCY DECISION

The record supports that Star Market (Appellant), committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to sustain the permanent disqualification of Appellant from participation as an authorized retail food store in the SNAP, as imposed by the Office of Retailer Operations and Compliance (Retailer Operations).

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 November 7, 2017, Retailer Operations informed the owners 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. Retailer Operations charged Appellant with trafficking. The sanction for trafficking is permanent disqualification. By letter dated December

6, 2017, counsel at that time, made a FOIA request. The FOIA office provided a FOIA response dated January 18, 2018. Counsel appealed the FOIA response by letter dated April 9, 2018. The FOIA office replied to the appeal by letter dated September 14, 2020.

On September 17, 2020, Retailer Operations issued counsel a notice to reply to the Charge letter. Counsel provided a reply dated October 8, 2020. Retailer Operations issued a Determination letter dated January 28, 2021. 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.

One owner requested administrative review by letter dated February 4, 2021. The review was granted by letter dated February 19, 2021. By email dated February 22, 2021, previous counsel noticed this office that he was not retained to represent the owners.

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 credible, 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) states: "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 transaction patterns were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of March 2017 through August 2017. The transaction patterns indicative of trafficking are:

- Multiple transactions made from individual benefit accounts in unusually short time frames.
- Excessively large purchase transactions made from recipient accounts.

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions as presented, including any not referenced.

- With all due respect I want to state that I sold the business star market in october 2018. Due to negligence of my manager and employees a few mistakes happened in my absence from the business place, i have been working in the retail/grocery store business since 2009 and have never been held accountable for any violations prior to this, please give me another chance to have any future businesses with your department and i assure you guys to communicate and take care of this problem in upcoming time. please consider uplifting any charges which will disqualify me from getting Supplemental Nutrition Assistance Program in the near future.

ANALYSIS AND FINDINGS

Retailer Operations staff use data patterns, onsite store photographs, shopping histories, and other analyses to evaluate the type and extent of potential SNAP violations by authorized retailers. This review encompasses the examination of the information in this case, the purpose

of which is to determine whether ownership demonstrates by a preponderance of the evidence, that the permanent disqualification should be reversed. The owner who requested review did not submit evidence to support that the violations in the charged transaction patterns did not occur. The owner admitted negligence of his manager and employees who made mistakes.

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 four criteria listed at the cited regulation are identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owners did not submit substantive documentation which demonstrates that the firm had established and implemented an effective compliance policy, and program to prevent SNAP violations, to support a trafficking civil money penalty in lieu of permanent disqualification. Given the lack of a substantial evidence submission the owners did not meet the criteria for a CMP.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store report, households' shopping histories, and other data, that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. The Appellant bears the burden of demonstrating, by a preponderance of the evidence, that the administrative sanction should be reversed. Based on the entirety of the record, the preponderance of the evidence in the Attachments, supports that violations did occur at Appellant 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. This decision is effective 30 days from its delivery to Appellant.

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 judicial review of this decision. If 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 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 delivery 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

March 18, 2021