

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

Star One Food Mart,

Appellant,

v.

Case Number: C0203100

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Star One Food Mart as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

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 Star One Food Mart.

AUTHORITY

7 U.S.C. § 2023 and its 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 October 27, 2017, the Retailer Operations Division charged the 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 2017 through September 2017. The letter noted that the penalty for

trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant through counsel responded to the charges in a letter dated November 13, 2017 and a fax dated November 20, 2017. The Appellant stated that the store's SNAP redemptions had increased due to the disqualification of other SNAP authorized stores in the area. The Appellant further stated that it is not unusual for SNAP recipients to use up all their benefits at the store within a day or two. The Appellant also stated that the store employees did not intend to violate any rules and if the store had been issued a warning letter it would have immediately complied as directed.

After reviewing the Appellant's contentions and the evidence in the case, the Retailer Operations Division issued a determination letter dated December 21, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 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 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a 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 postmarked January 8, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review 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 action 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 AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7

U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish 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, 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 § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

Trafficking means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food

7 CFR § 271.2 states, in part:

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 § 278.6(a) 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.]

7 CFR § 278.6(i) states, in part:

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 CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through September 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 22 sets of 46 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 131 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

APPELLANT'S CONTENTIONS

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

- The Appellant denies trafficking in SNAP benefits. The transactions attached to the charge letter do not show that any transaction was for the purpose of

buying or selling the benefit for cash or ineligible food. There is no evidence that the benefits were bought or exchanged or not used for the proper purpose.

- It is not unusual for customers to use up benefits all or most of their benefits within one (1) or two (2) days at the store.
- The store's SNAP redemptions had increased due to the disqualification of other SNAP authorized stores in the area.
- The charges are based on transactions that occurred over a six-month period. The owner and employees never had any intention to violate any SNAP regulations and they were never warned of any potential violations.
- The owner was not aware of any alleged violations prior to the charge letter and had not previously been in violation of SNAP regulations.
- Permanent disqualification will impose an overwhelming financial hardship on the owner and the nearby SNAP community.
- The owner has trained store employees based upon the resource tools available on the FNS website and with the use of the supply ordering book used by the store. Any employees who have been believed to have violated the SNAP have been terminated. This compliance policy is currently in place and was in place prior to the review period.

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

Authorization History

FNS authorized Star One Food Mart for the SNAP on January 6, 2009. The owner signed the SNAP application for the store on December 7, 2008 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits for ineligible non-food items.

During the review period of April 2017 through September 2017, the Retailer Operations Division classified the store as a convenience store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 25, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Star One Food Mart is approximately 1,400 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register for groceries and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- Store personnel confirmed that there was no food stored outside of public view in a storage area and that no food was stored offsite.
- There were no large bulk foods, expensive international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or large boxes of fresh fruit and vegetables for sale.
- The checkout area consisted of a countertop cluttered with products with approximately two (2) feet by two (2) feet of clear space to stack food. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods. The store also sold a large amount of snack foods and other accessory food items such as coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol, gasoline, mobile phone accessories, automotive products, health and beauty products, paper goods, and cleaning products. The store also had an ATM and offered a money transfer service.

The store owner confirmed with the contractor that the most expensive items sold by the store were infant formula at \$18.99 per 12.4 ounce can; a 24-can pack of Coke at \$7.99; a 12-can pack of Coke at \$5.99; and a 35 bottle pack of water at \$5.99. However, the most expensive item, infant formula, was only available in limited quantities of approximately eleven (11) cans. 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 transaction patterns significantly different from similar-sized competitors offering similar food items.

Trafficking Case Based on Transaction Data

The Appellant states that the charge letter did not specify what subpart of the trafficking definition under 7 CFR § 271.2 applies to the charges against the Appellant. Namely the charges did not state whether specific transactions involved the buying or selling of SNAP benefits for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances. Therefore, the Appellant concludes that a charge of trafficking cannot be assessed against the store.

With regard to this contention, 7 CFR § 278.6(a) does not require that the specific subpart of 7 CFR § 271.2 must be cited. Nor would it be possible to do so in a case based primarily on inconsistent redemption data or transaction data under an EBT system. FNS employs a computerized fraud detection tool to identify EBT 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 analyze 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 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, 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.]

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, 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 a convenience store’s stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer’s food inventory and infrastructure. Charge Letter Attachment 1 lists 22 sets of 46 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The Appellant states that it is not unusual for its SNAP customers to use most of their benefits within a day or two of receipt. However, a government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or on a single day especially at a single store.

The store visit pictures show that it is unlikely that SNAP customers would shop at Star One Food Mart multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or shopping baskets for transporting food within the store. Based on the analysis above, and 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.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, 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 a convenience store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 131 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, 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 offering similar food items.

The Appellant states that the store's SNAP redemptions had increased due to the disqualification of other SNAP authorized stores in the area. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that there are six (6) SNAP authorized stores within

¹ "Analysis of EBT Benefit Redemption Patterns: Methods for Obtaining, Preparing, and Analyzing the Data," report prepared by Abt Associates for the Food and Nutrition Service, USDA, November 2005.

a one-mile radius of Star One Food Mart including a larger combination grocery store. There are also two (2) SNAP authorized superstores located approximately 2.34 and 2.39 miles from Star One Food Mart. The Retailer Operations Division also determined that Star One Food Mart store does not appear to stock any expensive food items or any international or specialty food items not available at other retailers in the area. A government report² on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Star One Food Mart.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Star One Food Mart compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Basis for Determination

The Appellant contends that the owner and store employees never had any intention to violate any SNAP regulations and they were never warned of any potential violations over the six-month review period. The Appellant also stated that the store does not have any prior SNAP violations. Regarding these contentions, 7 CFR § 278.6(d) states, in part, that in making a disqualification determination FNS shall consider:

- (1) The nature and scope of the violations committed by personnel of the firm,
- (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and

² "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

(3) Any other evidence that shows the firm's intent to violate the regulations.

With regard to the nature and scope of the violations, trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that **a first time violation warrants a permanent disqualification**. Therefore, the fact that the store has not had any prior violations is not relevant in this case.

Regarding prior warnings, 7 CFR § 278.6(d) simply requires FNS to **consider** any prior warnings when determining a sanction. However, the SNAP regulations **do not require** the Retailer Operations Division to give prior warnings before issuing a charge letter for trafficking. SNAP regulations at 7 CFR § 278.6(e)(7) states that FNS will “send the firm a warning letter if violations are too limited to warrant a disqualification.” Trafficking transactions are not considered to be “violations that are too limited to warrant a disqualification.”

Lastly, the definition of trafficking contained in the SNAP regulations at 7 CFR § 271.2 does not require an element of intent on the part of the violator. Therefore, whether or not the owner or store employees intended to commit SNAP trafficking violations is not relevant in this case. In addition, the store owner signed a certification that he would accept responsibility on behalf of the store and its employees for any violations; therefore, whether or not the store owner was aware of the violations, the store owner is ultimately responsible and accountable for violations committed at the store.

Hardship to SNAP Customers

The Appellant claims that the local SNAP community will suffer a hardship if Star One Food Mart is permanently disqualified from the SNAP. Regarding this contention, there is no provision in SNAP law or regulations that would waive or reduce a permanent disqualification for trafficking due to a purported hardship to SNAP customers.

Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a **less than permanent** disqualification. However, the regulation at 7 CFR § 278.6(f)(1) clearly states that “a civil money penalty for hardship to SNAP households **may not be imposed** in lieu of a permanent disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted that there are 19 SNAP authorized stores located within a three-mile radius of the Appellant store including a supermarket and two (2)

superstores. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of Star One Food Mart.

Hardship to Firm

The Appellant states that a permanent disqualification of Star One Food Mart will impose an overwhelming financial hardship on the owner. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow store ownership to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant states that it had a compliance policy and program in place prior to the violations cited in the charge letter. However, 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. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that "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.]

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 SNAP compliance policy and program prior to the 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 the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for 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. 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 in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Star One Food Mart, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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, FNS is 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.

RONALD C. GWINN
Administrative Review Officer

March 29, 2018