

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

**Stop Shop N’ Go LLC,**

**Appellant,**

**v.**

**Case Number: C0210544**

**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 Stop Shop N’ Go LLC (Stop Shop N’ Go 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 August 22, 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 January 2018 through June 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 on September 4, 2018, and explained that it was unaware the transactions were violations and that correction action will be taken. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated September 10, 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 postmarked September 24, 2018, ownership 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 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(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 January 2018 through June 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 September 24, 2018, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant is trying to remember the customers that come to the store more than once a day.
- Appellant does not know how other stores manage multiple transactions.
- Although the wife is the owner of the business, the husband runs the store himself.
- There is not enough revenue to hire someone else.
- Appellant promises to run the store in a much more organized way and pay more attention.
- Appellant will lose customers if the suspension is for a long time.
- Appellant will use a bar code scanning system and install cameras and watch employees from time to time.
- Appellant had no idea that transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were violations.
- Appellant actual sales were 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with an average monthly sale of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with an average daily sale of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which includes cash, debit, credit, and EBT.
- Appellant's actual expenses were 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with an average monthly expense of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with an average daily expense of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which include business debit and credit card purchases.
- Appellant is losing its business.
- Appellant has not benefited from the EBT sales in order to get more customer.

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 Stop Shop N' Go as a convenience store on August 4, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 4, 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:

- Stop Shop N' Go is approximately 900 square feet with 150 square feet of storage outside of public view.
- The checkout space is raised with a small counter area surround by a Plexiglas display case with an ice cream cooler in front.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no fresh meat, poultry, or fish.
- There was an empty deli case.
- There were no bulk packages or any advertised specials.
- The only fresh produce was seven onions.
- Dairy included milk, cheese, butter, and infant formula.
- Other staple foods available for purchase were limited amount of juice, rice, bread, beans, cereal, pasta, and canned 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 products, cleaning products, and paper products.
- There were empty shelves and empty/broken coolers noted.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items, and accessory food items. The highest priced items noted were the following: infant formula - \$22.95; one large bag of rice - \$17.49; one bag of frozen shrimp - \$15.99; and frozen beef sausage - \$5.89. There were only two units of formula, one large bag of rice, one bag of shrimp, and two packages of sausage. 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 89 sets of transactions **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.

Appellant explains that it did not know that multiple transactions were violations and it does not know how to prevent this. 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 photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Appellant has not offered any 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 703 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The photographs from the store visit indicate that the counter space was small, and there was no fresh meat and limited fresh produce with no shopping baskets or cart. The frequency of high-dollar purchases in a four-month period calls into question the legitimacy of these transactions.

Appellant explains that it had no idea that transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** were violations. Again there are not limits on the size or frequency of SNAP transactions. These large transaction amounts are questionable because they are not consistent with the store's inventory with no fresh meat and barely any fresh produce, with the exception of six onions. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, and snack foods. On the day of the store visit, there were a few high dollar items including one bag of frozen shrimp, two cans of formula, one large bag of rice, and two packages of frozen sausage. In fact, on the day of the store visit, Appellant did not have sufficient inventory of dairy staple food items to meet SNAP authorization criteria. A retailer is required to have at least three stocking units of three different varieties of each staple food category. Appellant had sufficient quantities of cheese and milk only but only had two units of butter and two units of infant formula.

Appellant told the Retailer Operations Division that it has sold sandwiches previously but no

longer does that. It is hard to believe the sale of deli sandwiches would explain any or many of these large dollar transactions. There was no evidence submitted to support such an explanation.

The Retailer Operations Division compared Appellant to the average for convenience stores in Delaware. Appellant's average SNAP transaction amount was more than twice the average transaction dollar amount for convenience stores in the State. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant conducted 228 SNAP transactions in this ranges whereas the average for convenience stores in the State was 3.51 transactions. The Retailer Operations Division considered this an indicator of trafficking considering Appellant's eligible food stock, infrastructure, and proximity to larger, better stocked stores.

When a supermarket or super store is available, it is unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Appellant. The Retailer Operations Division determined that within a half-mile radius of Appellant there were seven other convenience stores, three small groceries, two medium groceries, and one supermarket. Thus, households who shop at Appellant have access to and do shop at large grocery stores, supermarkets and super stores, among all other types of authorized stores.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Stop Shop N' Go compared to their shopping patterns at other SNAP authorized stores. However, despite this access to better stocked stores, each of the three households conducted excessively large transactions at Stop Shop N' Go 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. There is no compelling reason for customers to consider Stop Shop N' Go as a first choice destination to fulfill large purchases of food.

Appellant provided self-reported income and expenses for the business. Appellant states that the business is not doing well. There was no documentation submitted to support these self-reported figures. Regardless, this is not sufficient evidence that the retailer did not traffick and that each questionable transaction was for eligible food items only. There was no evidence submitted to support these numbers. There was also no evidence provided to show that Appellant purchased sufficient inventory of eligible food items to support its SNAP transactions.

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. 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.

## Evidence

The ALERT system is 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 no relevant 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.

## Corrective Action

Appellant explained that if it is given another chance it will implement numerous corrective actions. Appellant promises to run the store in a much more organized way and pay more attention. Appellant will use a bar code scanning system and install cameras and watch employees from time to time. It is important to clarify that the purpose of this review is to either validate or to invalidate the earlier determination of the Retailer Operations Division. This review is limited to what circumstances existed at the time that was the basis of the Retailer Operations Division’s action. It is not the authority of this review to consider what subsequent remedial actions may be planned so that a store may begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of alleged or planned after-the-



fact corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant's contention that it has implemented corrective action does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Economic Hardship**

With regards to the Appellant's contention that a permanent disqualification will cause a hardship, it is recognized that economic hardship is a likely consequence whenever a store is permanently disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To excuse ownership from assessed administrative penalties based on purported economic hardship to the firm 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 will 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 imposition.

### **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

April 16, 2019