

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

**Talisheek Grocery & Moore LLC,**

**Appellant,**

**v.**

**Office of Retailer Operations  
and Compliance,**

**Respondent.**

**Case Number: C0224476**

**FINAL AGENCY DECISION**

The record supports that Talisheek Grocery & Moore LLC (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 Office of Retailer Operations and Compliance (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 January 14, 2020, 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. The sanction for trafficking is permanent disqualification.

One owner responded to the Charge letter January 15, 2020, and February 1 and 6, 2020. Retailer Operations issued a Credit Charge letter dated January 16, 2020. Retailer Operations issued a Determination letter dated March 3, 2020. 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 March 9, 2020, one owner appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated March 19, 2020. One owner also sent three emails to this office dated April 7, 2020.

### **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 § 278.2(f) states: "SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year."

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 April 2019 through September 2019. The patterns of transaction characteristics indicative of trafficking are:

- **Attachment 1:** Listed are 26 transactions in 13 sets that were made from the accounts of individual SNAP households within a set time period.
- **Attachment 2:** Listed are 86 EBT transactions that are large based on the observed store characteristics and recorded food stock.

### APPELLANT’S CONTENTIONS

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

- EBT sales account for roughly under 40.5% of my sales for 2019.
- I have quite a few regular customers who run a food ticket throughout the month especially during the summer months.
- I didn’t do anything intentional to break rules or laws. I work with local law enforcement to keep crime down. I turned in quite a few people for falsifying information to get food stamps.
- Parents give me a set amount each day that they can spend on a drink or sandwich.
- I have deals on pizza 5 or more \$49.00. I sell chicken wings 5 pounds, chicken patties and other frozen bagged items.

- On Attachment 1 - this would be someone paying their food bill here, and then making a purchase, or vice versa. In reference to the “same day” purchases, this could be perhaps they came in and purchase items, but realized the meat was coming that afternoon.
- On not having enough food products when the store visit was conducted, I had been out for over a week and had skipped deliveries twice. The multiple photos of various items sent were from a restock of food items after the contractor’s store visit.
- I only keep totals so that I will know my sales volume. I have made arrangements with them on a payment plan for the balances.
- The store provides ‘Special Orders’ on meat and customers depend on the store to provide them with a variety of foods.
- I have two customers who will say they carry a balance here throughout the month. Many have no transportation here.
- Now that there is no option for customers to pay later they must stick to a budget. I purchased a new register with two rolls and a thousand different programs. It will keep track of every single thing. I don’t know how else to prove anything. I can assure you there will be no more charging food for EBT users.
- I deal with most on a first name basis and use a pencil so I can easily erase yesterday’s balance and add today’s with it. The handshake is still used as good faith here.
- While thoroughly researching the situation I have found an interesting case that virtually replicates mine. He was permanently disqualified along with many others.
- There is a very large difference between those cases and mine. Those stores had multiple stores, usually within a mile or less of them. I have included some attachments here to show that this is clearly not the case for me. The stores where one would obtain meats, onions, local varieties of healthy items, they are 8.2 to 19 miles from my location. A store opened right next door to me over a year ago, I thought I was doomed. Surprisingly it helped me, as they do not sell items such as red beans, fish fry, shrimp fry, cool whip, sour cream, etc.
- Though there are some items I do not sell as much as I used to, my sales on meat, vegetables, and various other items they do not carry went up. I began to see quite a lot of new faces, as most come from a little distance even by car to get to this store. Employees at the store regularly send shoppers here when they are looking for meat or produce, along with the multitude of products they do not carry.
- I have put together Census information as to the population and poverty levels of Talisheek, and the immediate neighboring towns, towns that include my customers. Talisheek has a stated 312 residents, with a BELOW poverty level of 17.3%. We do not even have mail delivery. Hickory has approximately 5,454 with a BPL of 27.2%. Pearl River, in walking distance of me, 2,556 with a BPL of 21.4%. Slidell, the largest town that way, has 27,769 with a BPL of 14.6%. To the opposite side of me, take a look at Bogalusa with 11,793 residents and BPL of 40.1%. These numbers are quite high.
- The overall grocery sales to EBT sales really doesn’t seem high at all compared to the amount of people and amount of benefits they receive. I am literally surrounded by households considered below poverty level.
- My total GROCERY sales for 2019 were 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This amount is merely 5 U.S.C. § 552 (b)(6) & (b)(7)(C) more than previous years. I attribute that to the teens turning of age to be on their own benefits, women having more children, hence benefits are higher and they buy more food.

- According to a USDA section chief who oversees disqualifications, algorithm-flagged stores referred to her office for investigation are issued charge letters more than 95% of the time. Once they are charged, their chances of reversing the decision are close to zero.
- After reading and absorbing all of this information, I realize that the chance I have of “proving myself” innocent, with the exception that I fully admit to allowing people to have credit accounts and immediately stopped this once I was notified, are slim to none. No matter the outcome, I am a pillar of this community, and I will not turn my back on the people here.
- It is very common for people in these rural areas to visit the store more than once a day. In addition to the many that walk here several times a day, I have a few customers that ride bicycles with large baskets on the front, and one in particular that drives a riding lawn mower with a small bin-type trailer behind it to get their groceries home.
- I have two customers that shop here by means of golf carts, as they do not have transportation. It broke my soul to tell a regular EBT customer that she could not buy her groceries here with her EBT card for now, possibly never again. She was here to spend her usual **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- I am not sure why the person who did the last snapshot of the store made the decision to state that I didn’t have enough groceries here to sell, or space to sell it in. That is incorrect. I do not have carts with wheels, but there are 3 handheld baskets. When people have a lot of items, we push back whatever is on the counter at the time and make room. I have a bag rack on one side of register, counter space on the other side. When the USDA worker came out, I had been dealing with a multitude of issues, including dealing with rearranging of my shelves to add 2 end caps (there was a lot of dry goods in tires sitting in storeroom that weren’t even looked at) and I was out buying inventory to restock shelves with what was missing and refrigerated/frozen items when she came to evaluate store. I made certain that my friend, who was watching the place told the worker that I was coming back with a truckload because I had missed almost 2 weeks of deliveries due to the issues at hand at that time.
- I have been accepting SNAP since I purchased the business in late 2011. The use of SNAP benefits has stayed on a relatively even level every year. There have been months where it was less than others, that is usually attributed to my inability to restock from time to time.
- I did state to the FNS, against the advice of a fellow friend/store owner, that I have always allowed “charge tickets” to locals that needed it, most of them are EBT customers. I did not realize that this was against the rules.
- When I was notified it was, I immediately posted a notification at register that told the customer exactly that. I sent a photo of said notice to FNS. I received a response telling me that I violated policy by doing this, and that the penalty was a 1 year disqualification period. I have to admit, I thought that it was pretty much a done deal at that point. He asked for proof of what was charged. I sent what I had to explain the situation. Obviously it wasn’t enough, however, it’s how I’ve been doing things since 2011.
- The register doesn’t specify items. I actually started emailing FNS a picture of EBT receipt, register receipt and the customers EBT card when I would have a large purchase. Did it numerous times, including the day I received this last correspondence.
- I began taking photos of the actual card, EBT receipt and register receipt and emailing them to the USDA worker during this process. She is one of the customers that I sent

receipts for, and I also pointed out that her card will not swipe, the magnetic strip is not working, therefore, it is a manual entry. I am including such transactions in this package, along with all of my prior correspondence. The regular customers asked if they could write letters to send in, but due to the experiences I read about in all my research, it apparently would have just been in vain, so I declined to have them do this.

- The photographs of the inventory differ from the ones originally sent to FNS, I wanted them as up to date as possible so I took current ones, especially since I actually counted virtually everything here to make as accurate a list as possible. The food sales for the week ending on 3/8 were **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, so the list as to the photos will vary as well.
- When I first applied to process EBT transactions, even though this is solely my business, meaning my husband has absolutely nothing to do with the business in any fashion, the lady that did the application said I had to list him because we are legally married. I have found this information to be incorrect. I had never heard of such a “law,” but this is what I was told by an FNS employee, therefore, it was correct, or so I thought. Please remove my husband’s name from these accusations, if possible. I would be grateful for that one request.
- I am guilty of violating your policy by allowing credit accounts, but I did not steal anything, and permanently disqualifying me seems harsh for a mistake that was made ensuring the people that come here could adequately feed themselves and their family. I stopped all food tabs on EBT customers and posted a notice in the store.
- I did send a lot of information on what I thought would help make things a bit clearer for the situation with the store, but I do not feel as if any of it will make a difference.
- I have given away most everything and several hundred dollars worth out of my store to cardholders that normally purchase meats, produce and essentials here since I no longer take the card. It is starting to make me psychically ill to turn them away.

The responding owner provided: handwritten ledger page with customers’ names and dollar amounts next to each name; photos of EBT cards and EBT receipts; some store photos; a list of stores in the area; information about the post office; census data; a 2018 article from “The New Food Economy;” pages from some USDA final agency decisions; an article from NPQ; a 2019 NACS article; a list of store stock as of 3/7/2020; copies of EBT sales receipts with EBT cards dated in the month of February 2020; a copy of the posted notice to EBT customers that the store could no longer run a ticket; a web link to Tulane University with information on food desserts; a web link to Wikipedia to the definition of a food dessert; and ten copies of vendor invoices.

## **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.

The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system. The owner 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. The owner has not provided a preponderance of evidence to support that the transactions listed in the Attachment patterns were for eligible foods.

The owner claimed in a telephone conversation with Retailer Operations that credit was advanced to beneficiaries, a violation of the SNAP regulations. Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A retailer that claims credit accounts for the Attachment patterns must provide adequate evidence that credit accounts existed at the time the suspicious EBT transactions occurred. Such evidence may include an accounts receivable ledger, which lists the name of each recipient, and the dates and amounts of each transaction the retailer claims was credit. The information should also show that only eligible foods were acquired on violative credit. A firm that commits documented credit violations is sanctioned with a one year disqualification period and may also incur fiscal claims. If the retailer does not provide adequate evidence of credit documentation, the retailer shall be permanently disqualified for trafficking.

At the time of authorization each retailer is provided a USDA SNAP training guide that states that credit and trafficking are not allowed. The training guide is also available online and in many languages. This guide states that SNAP customers must pay for their purchases at the time of sale and that a retailer may not accept SNAP benefits as payments on credit accounts. The training packet includes:

- A video and book that explain the SNAP rules.
- Information that the store owner is responsible for carefully reviewing the program rules and making sure all employees fully understand these rules.
- Information that failure to follow the rules can result in disqualification, fines, civil and/or criminal action.

Enclosures provided by FNS to retailers when authorized include:

- A SNAP Permit
- SNAP Training Guide for Retailers and a training video
- Report Abuse of the SNAP Poster - MUST BE POSTED IN YOUR STORE
- We Accept SNAP Benefits - Window Sticker and Poster
- Using SNAP Benefits Poster
- Dos and Don'ts for Cashiers/Penalties for Violations of the SNAP: Double-sided sign
- EBT Fact Sheet
- From the "SNAP EBT Dos and Don'ts card (FNS-136, included in the authorization package) "Do not accept SNAP benefits (EBT) as payment on credit accounts."
- From the SNAP Training Guide for Retailers: "SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments of credit

accounts. You may not hold customers' SNAP EBT cards or card account information at your store for future use.”

Thus, ownership was provided multiple and redundant resources through which a thorough knowledge of SNAP rules and requirements could be readily obtained. By signing the certification to become a SNAP retailer, the owner(s) confirmed understanding of and agreement to abide by the rules and regulatory provisions. These include violations such as accepting SNAP benefits as payment on credit accounts or loans and trafficking. The certification is clear that violations of Program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the SNAP. Even if the responding owner's ignorance of the SNAP regulations could be established, accepting the contention that ignorance of the SNAP regulations is a mitigating factor, would render inert the enforcement provisions of those very regulations.

The record supports that both parties that are the subject to this review are the stated owners of this firm. The responding owner provided some pages of credit lists that included first names, no address, and also some photos of EBT cards with EBT receipts. Retailer Operations determined that the responding owner failed to provide sufficient evidence to support the legitimacy of the transactions listed on the Attachment patterns. Given the lack of detail regarding purported credit for eligible food sales, Retailer Operations was not convinced that the suspicious transactions represented credit account transactions for eligible SNAP foods more likely than trafficking transactions as charged. The credit tickets with EBT cards copied did not record the items allegedly purchased. The other lists of names did not provide the dates, the full name and addresses of the recipients, and the detail necessary to support that eligible items were transacted on violative credit. Therefore, the evidence of credit was not adequate. Retailer Operations properly permanently disqualified Appellant for 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 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 owner did not submit substantive documentation to support a trafficking civil money penalty in lieu of permanent disqualification as required by the regulations.

The lack of a substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations, supports that the owners did not meet the criteria for a CMP. It is deemed that Retailer Operations properly denied 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 inventory report, and household shopping analyses that provided evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Based on empirical data, and in the absence of evidence presented by Appellant of the legitimacy of the transaction patterns, the preponderance of the evidence supports 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. This decision is effective 30 days from delivery to the owners.

### **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

April 28, 2020