

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

**Taylor Creek BP,**

**Appellant,**

**v.**

**Case Number: C0206707**

**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 Taylor Creek BP (Taylor Creek BP 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 March 27, 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 October 2017 through January 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, through counsel, replied to the charges by letter dated April 6, 2018. Appellant explained that the transactions were due to SNAP recipients receiving more SNAP benefits due to Hurricane Irma. Appellant requested a CMP in lieu of a permanent disqualification.

After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated May 7, 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 May 15, 2018, Appellant, through counsel, 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 October 2017 through January 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value.
- 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 Appellant's May 14, 2018, administrative review request, Appellant provided a copy of its April 6, 2018, reply to the Retailer Operations Division. This letter contained the following summarized contentions, in relevant part:

- Appellant submitted employee statements that the business had a policy in place directing that all SNAP regulations were to be reviewed and followed.
- Although no contemporaneous formal documentation exists, Appellant has current statements that the policy did exist prior to the alleged violations.
- Moving forward, procedures have been instituted to formalize and document initial and refresher SNAP training.

Appellant provided an affidavit of one of the store owners which states the following:

- Upon acceptance into the SNAP program, the business instituted a policy of ensuring that all SNAP regulations were to be followed and that the violations of the rules would result in immediate termination of the offending employee.
- Appellant required all employees to be given a copy of the training materials provided with the SNAP equipment.
- All employees were repeatedly instructed about the SNAP rules and requirements.
- Appellant instituted the following procedures immediately:
  - Requiring all current employees to receive, agree to and sign the policy statement demanding compliance with all SNAP regulations;
  - Requiring a re-review of the written FNS training materials;
  - Requiring a re-review of the video materials on the FNS website training page; and
  - Requiring increased documentation in the form of reporting forms to ensure compliance with FNS regulations.
- SNAP customers received extra benefits due to Hurricane Irma and were given strict timelines during which to use the benefits.

- Appellant does not have an explanation for the numerous transactions that end in a same cents value.
- Appellant did not terminate the employees because it could not prove any intentional misconduct.
- In lieu of termination and in order to prevent further violations, Appellant instituted a formalized annual refresher training that will be required and will be documented.
- Appellant has no previous violations.

Appellant provided the following documents:

- Three training documents signed April 4, 2018, documenting previous training for three employees;
- W2s for 2017 for three employees;
- May 7, 2018, determination letter;
- March 27, 2018, charge letter

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Taylor Creek BP as a convenience store on December 5, 2011. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 22, 2017, 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:

- Taylor Creek BP is approximately 1200 square feet.
- There was no shopping baskets or shopping carts for customer use.
- The checkout area was small and was surrounded by a Plexiglas barrier.
- The store does not offer any promotional specials, packages, or bulk items.
- There was no fresh unprocessed meat, poultry, or fish.
- Other meat items included hot dogs, a few packages of bologna/deli meat, canned meat, canned fish, and jerky.
- There was limited fresh produce including some apples, bananas, and limes.
- There was limited dairy available including milk, butter, and cheese.
- Other staple food items included cereal, pasta, rice, beans, eggs, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included gas, alcohol, lottery, tobacco products, health and beauty aids, paper products, and cleaning products.

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. 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. There were an unusual number of transactions ending in a same cents value.** During the review period, there were 47 transactions ending in a same cents value that meet the parameters of this attachment. When such patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits.

The store visit report that was completed with the cooperation of the store employee indicated that typically prices ended in 9 cents. It is possible that some of the smaller transactions are the result of purchasing some same cent items and this could explain some of the lower dollar same cent transactions. However, the larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these purchases would routinely total to an amount ending in same cents. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

**Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 20 sets of transactions that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits that meet the parameters of this scan. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 offer no legitimate 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, or significant bulk items for sale. The transactions are too large to consist of a forgotten item or two.

Appellant explains that due to Hurricane Irma SNAP recipients received more SNAP benefits that need to redeemed in a certain amount of time. If this was a credible explanation for this transaction pattern, then it would be expected that they pattern would be seen at other stores. However, the Retailer Operations Division compared Appellant to two nearby stores with similar stock and only one of these stores conducted one of this type of transaction set. Thus, this is not a likely explanation for these questions 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. 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 4: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 105 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The photographs from the store visit indicate that there were no shopping carts or baskets, the counter space was small, and there was limited eligible food stock. Thus, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. There is no compelling reason for customers to consider Taylor Creek BP 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.

There were several repeated transaction totals. There did not appear to be special packages or promotions that would result in these transactions totals. Consequently, when many transactions amount to the same total, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

The Retailer Operations Division compared Appellant to two nearby stores with similar or superior inventory than Appellant. Appellant's total SNAP dollar volume exceeded the comparison stores. Appellant conducted more SNAP transactions compared to the other two stores. Appellant's average SNAP transaction amount was also greater than the other two stores. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Retailer Operations Division determined that this was an anomaly for a small store which would normally derive most of its redemptions in the lowest value ranges. In addition, the transaction patterns of Appellant noted in the Charge Letter also exceed the other three authorized stores, as seen on the table.

**5 U.S.C. § 552 (b)(7)(E)**

The Retailer Operations Division analyzed the shopping patterns of three 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 five households conducted excessively large transactions at Taylor Creek BP while also shopping at a supermarket or super store. Two of the three households transacted significantly more SNAP benefits in the small convenience store than they did in the supermarkets. 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.

Appellant explains that SNAP recipients received more SNAP benefits due to Hurricane Irma and they needed to redeem them by a certain date. The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. Households in this Attachment are regularly shopping at much larger stores and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at Appellant's smaller and minimally stocked business. Since Appellant's business has no fresh meat, limited fresh produce, and minimal staple food stock, these patterns are deemed to be suspicious.

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.

### **No Previous Violations**

Appellant contends that it is its first time that it has been charged with violations. A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers, and/or employees.

### **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 10 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. The criteria for a trafficking civil money penalty in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, in part:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and



Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm ....

Appellant provided an affidavit from ownership that explained that it provided training prior to the review period. Appellant explained that the owner/operator carefully reviewed the regulations and all SNAP material and the training video. However, Appellant did not submit any documentary evidence to show when the training actually occurred. There is no contemporaneous documentation that could verify that Appellant's compliance policy existed prior to the trafficking. Moreover, counsel acknowledges that there is no contemporaneous formal documentation besides the submitted statements. The Retailer Operations Division determined Appellant's narrative explanation describing the training program and the statements from employees is not substantial evidence that Appellant met all four criteria required by 7 CFR § 278.6(i).

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. Although these standards are high, they are required by the regulations and Appellant must be held to them during the course of this review.

As Appellant did not provide the required supporting documentation, the Retailer Operations Division did not assess a CMP. According to the requirements stated in 7 CFR § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

## **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 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 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

August 28, 2018