

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

Terrys One Stop,

Appellant,

v.

Case Number: C0202636

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 Terrys One Stop 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 Terrys One Stop.

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 September 28, 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 March 2017 through August 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 received the charge letter on September 29, 2017 as documented by a UPS delivery notice in the casefile.

The Appellant responded to the charges in an undated letter received on October 2, 2017. The Appellant stated that the irregular transactions cited in the charge letter were generally due to the store being in a rural area where SNAP recipients had unreliable transportation and would only make purchases once or twice a month resulting in large transactions. The Appellant provided a price list which it claimed would cause purchases to easily add up to large transactions. The Appellant also claimed that the multiple transactions were due to several factors including but not limited to SNAP recipients coming back four or five times a day to shop. The Appellant did not request a CMP in lieu of permanent disqualification under 7 CFR § 278.6(i).

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated October 12, 2017. The determination letter informed the Appellant 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 the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 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 dated October 23, 2017, the Appellant 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 § 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, 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 ...*

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 March 2017 through August 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 32 sets of 75 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 312 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 made the following summarized contentions in its request for administrative review, in relevant part:

- The store denies trafficking in SNAP benefits or exchanging anything other than eligible food for SNAP benefits.
- The store is in a rural area where some SNAP recipients don't have reliable transportation. These customers will come in once or twice a month and make large purchases to last until the next month.
- The submitted price list of common items purchased with SNAP are an example of how items can add up to large amounts.
- Some SNAP recipients will shop and after their purchase is made they will discover they have a balance remaining on their card and make an additional purchase in a short time.
- Some customers come back to the store as much as five (5) times a day.
- The store often has to process manual transactions because of a worn mag stripe on the card and it does not always swipe. The SNAP customer then has to complete a manual transaction.
- The store has provided six (6) affidavits from SNAP customers, copies of four (4) weeks of purchase invoices, pictures of the store and a signing sheet for SNAP training conducted for all of its employees in support of its contentions.

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

The Food & Nutrition Service (FNS) authorized Terrys One Stop for the SNAP on December 23, 2010. The owner signed the SNAP application for the store on November 30, 2010 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.

During the review period of March 2017 through August 2017, the Retailer Operations Division classified Terrys One Stop as a convenience store. A review of the store visit report indicates that FNS properly classified Terrys One Stop as a

convenience store during the review period.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 1, 2017 store visit conducted by an 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 store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Terrys One Stop is approximately 1,830 square feet in size.
- The store had two (2) cash registers, but one (1) was dedicated to lottery ticket sales. The store had only (1) point-of-sale device.
- The store had no optical scanners or conveyor belts at the checkout.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- 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, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale. According to store personnel, the most expensive food item was 16 oz. of honey at \$14.99.
5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The store visit pictures showed that some shelves were empty or sparsely filled with food products.
- The checkout area consisted of a small countertop no more than two (2) feet by three (3) feet in size. The limited space at the checkout area made it not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a convenience store with a limited selection of staple food stock. 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. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, alcohol, lottery tickets, gasoline, mobile phones/phone cards, automotive supplies, health and beauty products, paper goods, cleaning products, party goods, and souvenirs. The store also sold SNAP ineligible hot food in the form of boiled peanuts, pizza and hot breakfast biscuits and had a kitchen, microwave, and dining table with chairs.

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. In addition, the store pictures provided by the Appellant are substantially the same as those taken during the store visit and do not show any bulk food, specialty food or international food that would sell for a high price.

Multiple Transactions 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 32 sets of 75 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a convenience store with limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a supermarket or superstore in Georgia. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant contends that some SNAP recipients will shop and after their purchase is made they will discover they have a balance remaining on their card and make an additional purchase in a short time. However this explanation is insufficient to explain the large number of repeat transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, if SNAP recipients are unsure of their balance it is more likely that they will perform a balance inquiry at the store before shopping.

The Appellant states that the store often has to process manual transactions because of a worn magnetic stripe on the card which causes it not to successfully swipe. It is not clear why the Appellant raises this as a defense since the store was not charged with having an excessive number of manual transactions. However, some of the repeat transactions in a short time frame consist of both swiped and manual transactions. Sometimes the manual transaction was conducted first and then swiped transactions later. This is not consistent with the Appellant's claim of damaged cards and this pattern is more likely than not to be due to trafficking.

The Appellant provided form affidavits from six (6) alleged SNAP customers stating that they have made repeat transactions at Terrys One Stop when

realizing, upon immediately exiting the store, that they forgot to purchase a few items. The Retailer Operations Division researched the SNAP shopping history of these households and determined that one (1) affidavit was from a household that did not have a shopping history at Terrys One Stop.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, the evidence does not support that these households made an immediate transaction after realizing they forgot to buy “a few items.”

The Appellant says on one hand that transportation is difficult in this rural area causing SNAP recipients to make large purchases once or twice a month, but other SNAP customers come back to the store as much as five (5) times a day to make purchases. This conflicting argument is not credible. In addition, the store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, 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. In addition, the store’s small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and no 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 312 SNAP transactions

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

The Appellant provided a price list of common items purchased with SNAP as an example of how items can add up to large amounts. However, these items are unlikely to explain the excessively large transactions cited in the charge letter. In addition, as noted above, the store visit report shows that this store is unlikely to have transactions patterns significantly different from other similarly situated convenience stores.

The Appellant states that the store is in a rural area where some SNAP recipients don’t have reliable transportation. Allegedly, these customers will come in once or twice a month and make large purchases to last until the next month. It is true

that sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, if this were true one would expect to see the same transaction patterns exhibited in other convenience stores in Putnam County, Georgia. The Retailer Operations Division determined that there were four other SNAP authorized convenience stores within a five-mile radius of Terrys One Stop and none of them exhibited the same excessively large transactions. In addition, there was a much larger combination grocery store located 1.94 miles away which would offer SNAP customers a much larger selection of staple foods at likely better prices.

The Appellant provided form affidavits from six (6) alleged SNAP customers stating that they lacked transportation to larger stores and therefore made bulk purchases at Terrys One Stop approaching or exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division researched the SNAP shopping history of these households and determined that one (1) affidavit was from a household that did not have a shopping history at Terrys One Stop. Of the (5) remaining households, all in fact had access to, and shopped at larger stores including supermarkets and superstores during the review period. Despite this access to better stocked stores, these households conducted excessively large transactions at Terrys One Stop on the same day or within a couple of days of shopping at these supermarkets and superstores. It is not credible that a convenience store would have transactions comparable or exceeding those at supermarkets and superstores. The evidence shows that the statements made in the affidavits are false and cannot be relied upon to support the Appellant's contentions.

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 support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store with no shopping carts. 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.

Purchase Invoices

The Appellant submitted purchase invoices for eligible food items during the review period of March 2017 through August 2017. During the review period, the Appellant's purchase invoices document that the firm purchased approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of food for the store. Applying a 40 percent markup results in estimated total eligible food sales of

5 U.S.C. § 552 (b)(6) & (b)(7)(C) for the review period. However, during these same months, the Appellant redeemed approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. This indicates that the store did not have enough food available to account for SNAP sales when combined with the store's cash and credit card sales. It is also likely that some of the store's food purchases were used for its hot food sales which would not be eligible for purchase with SNAP benefits.

CIVIL MONEY PENALTY

During the administrative review, the Appellant submitted a copy of a document entitled *SNAP Training for Employees* showing the dates its employees allegedly reviewed the *SNAP Training Guide for Retailers*. 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)(ii) and (iii) mandate that both the trafficking CMP request and supporting documentation and evidence must be submitted within ten (10) days of the receipt of the charge letter. Therefore, the Appellant is not eligible for a trafficking CMP.

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 under 7 CFR 278.6(i)(1). In conclusion, 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 Terrys One Stop, 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

January 29, 2018