

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

**Tienda Hispana El Jaral,**

**Appellant,**

**v.**

**Case Number: C0200702**

**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 Tienda Hispana El Jaral (Tienda Hispana 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 October 10, 2017, 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 March 2017 through July 2017. 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 October 19, 2017.

Appellant denied trafficking and explained the transactions were normal due to the unique circumstances of the store.

After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated November 16, 2017. 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.

In a postmarked November 29, 2017, Appellant 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 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 as: "(1) 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, inter alia, 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, 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)(ii) states, inter alia: “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(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 March 2017 through July 2017. 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 appeal request postmarked November 29, 2017, and subsequent correspondence dated January 11, 2018, Appellant provided the following summarized contentions, in relevant part:

- Appellant is unaware of any purchase limit.
- The receipts attest to the validity of the transactions.
- The receipts provided corresponding to Attachment 1 would be hard to recreate and are easily verified.

In support of its contentions, Appellant, through counsel, submitted the following documents:

- Invoices for items purchased for each month of the review period;

- Cash register receipts for 33 of the transactions;
- Summary of Sam's Club's purchases; and
- Summary of inventory purchases.

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 Tienda Hispana as a convenience store on November 8, 2012. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 2, 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:

- Tienda Hispana is approximately 1500 square feet.
- There were some shopping baskets and two shopping carts for customer use.
- The check-out area is small and limited.
- The store does not offer any promotional specials, packaged, or bulk items
- There was no fresh unprocessed meat.
- There was limited fresh produce including including bananas, pineapples, mangoes, apples, carrots, limes, and lettuce.
- Dairy included infant formula, milk, butter, cheese, and ice cream.
- The most expensive items sold at the store was infant formula (\$27.99, \$21.99, and \$20.99) and ten pound bags of rice (\$12.99).
- Other staple food items included bread, cereal, baby food, canned fruits and vegetables, canned meats and fish, and a limited variety and quantity of frozen foods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included include tobacco products, health and beauty aids, paper goods, and cleaning products.

The SNAP eligible food stocked by the store was generally of a low dollar value, with the exception of baby formula, 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. Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 10 sets of transactions conducted by nine different households **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.  
**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Appellant explains that it was unaware of any limit on the number of transactions a household can conduct. It is true that there is no limit placed on the number of household transactions. 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 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.

The Retailer Operations Division determined that households that are conducting rapid, repetitive, and large transactions at Appellant are frequently shopping at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant. Based on the shopping patterns of these EBT customers, transportation to other stores did not appear to be an issue.

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 2: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 103 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In fact, 44% of all Appellant's SNAP transactions conducted during the review period were excessively large and met the parameters of this attachment. As noted previously, there is no indication from the store visit report that the store would be likely to

have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. Appellant did not stock a profusion of high dollar staple food items such as meat, poultry or seafood. Appellant's eligible stock consisted of limited staple foods and accessory foods. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant informed the Retailer Operations Division that it had increased its food inventory and was offering customers rice and beans in bulk. However, the invoices submitted for the review period invoices show that a total of 10 units of 50 pound bags of beans were purchased. According to the cash register receipts, Appellant sold five of these bags of beans for \$40.00 each during the review period. There were no purchases of bulk bags of rice during the review period; yet the cash register receipts show that two sacks of rice were sold for \$40.00 per unit. The report and photographs from the September 2, 2017, store visit; do not show any bulk items. There were only some 10 pound bags of rice. One of the owners was present during the store visit and confirmed that the highest priced item, in addition to the infant formula, was the ten pound bag of rice that sold for \$12.99. Therefore, the evidence does not support that these large dollar transactions are due to bulk sales of rice and beans.

**5 U.S.C. § 552 (b)(7)(E).**

The Retailer Operations Division compared Appellant to two nearby stores that had a similar selection of ethnic goods or a superior selection, including meat, fish, and produce. Each of the two transaction patterns of Appellant exceeds the other two authorized stores, as seen on the table. Given that the other stores had a wider selection of staple food items and ethnic goods, the Retailer Operations Division considered this an indicator of trafficking.

**5 U.S.C. § 552 (b)(7)(E)**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Considering Appellant's eligible food stock and infrastructure, this is highly unlikely and likely indicative of trafficking.

Sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that within a two-mile radius of Appellant, there are 41 other authorized firms, including three supermarkets, and three super stores. It is not plausible that the firm's customers would regularly purchase large amounts of merchandise at Appellant when larger, better stocked stores are readily available and in the vicinity of the Appellant firm.

The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Tienda Hispana compared to their shopping patterns at other SNAP authorized stores. 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 four households conducted excessively large transactions at Tienda Hispana

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at a supermarket or super store. Based on the large transactions conducted at supermarkets and super stores, it is clear that these households do not depend on Appellant for their major food item needs as Appellant contends.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is no legitimate reason why households would conduct large transactions at Appellant when these household 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.

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.

### **Receipt Analysis**

Counsel contends that the submitted receipts attest to the validity of the transactions. Counsel also reports that the receipts provided corresponding to Attachment 1 would be hard to recreate and are easily verified.

Appellant submitted 33 receipts for some of the SNAP transactions listed. Twenty-two of the receipts are for each of the Charge Letter 1 transactions. While reviewing the cash register receipts from Appellant, the Retailer Operations Division discovered that 12 of the register receipts time listed a transaction time that was **after** the time of the EBT transaction listed in the Charge Letter. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Thus, these receipts were likely created for the purpose of responding to the charge letter and are not credible. Moreover, even if the receipts were legitimate, the majority of the SNAP transactions listed are still unaccounted for.

### **Invoice Analysis**

Appellant submitted invoices for the eligible food items it purchased during the review period to support its SNAP redemptions. Each of the invoices was analyzed. Some invoices were excluded including those that were: outside of the review period; for ineligible items; for different stores; or undated. Appellant is a WIC authorized vendor and consideration was given to its WIC redemptions during the review period. The Retailer Operations Division determined that the submitted invoices did not support the firm’s SNAP redemptions during the review period. Consideration also has to be given to cash and credit card sales. Although the inventory receipts submitted support the firm’s claim that they sell rice, flour, cans, milk, and pasta; the submitted receipts do not demonstrate that the firm’s stock could support their redemptions during the review period.

The large dollar transactions remain questionable even if there was sufficient food inventory to support such transactions when consideration is made of there being no fresh unprocessed meat and limited fresh produce, a large inventory of low-dollar value snack food and beverages, a

greater variety of food at lower prices at other stores which many customers also shop, and little counter space to place food for purchase for checkout. There does not appear to be anything that would reasonably attract SNAP households to shop at Appellant, a convenience store, and spend substantial amounts of their SNAP benefits.

### **Denies Trafficking**

Appellant denies trafficking. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact. Appellant must provide a preponderance of evidence 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 in order for the administrative action to be reversed. Appellant did not provide any compelling justifications for the transactions listed on the charge letter attachments. In the absence of compelling information or documentation, 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.

### **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 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

March 28, 2018