

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Tommy West-Side Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0202768

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 Tommy West-Side Food Mart (Appellant) from participation as an authorized food retailer in the Supplemental Nutrition Assistance Program (SNAP), as imposed by the Retailer Operations Division (Retailer Operations), was proper.

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 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

By Charge letter dated October 10, 2017, Retailer Operations informed the owner that Appellant was in violation of the terms and conditions of the SNAP regulations based on EBT benefit transactions that “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.” The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter by telephone October 11, 2017, and in writing on October 17, 2017. Retailer Operations issued a credit Charge letter dated October 19, 2017. The owner contacted Retailer Operations by telephone on October 23, 2017, and sent a letter October 26, 2017. Retailer Operations issued a Determination letter dated November 7, 2017, that informed the owner that Appellant was permanently disqualified from participation in the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, the firm was not eligible for the CMP because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated November 17, 2017, the owner, via counsel, appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated November 29, 2017. Counsel provided additional information by letter dated December 23, 2017. This information was shared with Retailer Operations for its review.

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 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). Parts 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 § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot foods and hot food products prepared for immediate consumption."

7 CFR § 278.2(f) states: "Food stamp 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(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.”

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 on review were based on an analysis of electronic benefit transfer (EBT) transaction data during the period of January 2017 through June 2017. This involved three patterns of EBT transaction characteristics which are indicative of trafficking:

1. An unusual number of transactions ending in a same cents value.
2. Multiple transactions made from individual benefit accounts within unusually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a brief summary of the owner’s contentions in this matter however, in reaching a decision, attention has been given to all contentions presented, including any not specifically referenced here.

- Our client requested a re-inspection as they were not prepared for your visit and did not have adequate books and records available for review on the date.
- Nor did your inspector [sic] anything more than a cursory premises review and then left without any substantive interview of the principals.
- All purchases are legit and are in exchange for perishable food items.

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.

Attachment 1: Listed are 208 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When a disproportionate number of transactions end in same cents values it appears that these transaction amounts are contrived.

Contentions:

- The store offers grocery specials 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Many customers buy additional items with the specials.
- There are an array of items that are priced with the cent denomination values 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The store carries several items priced with the value 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Customers may be purchasing a grocery special and decide to grab two bags of chips for \$1.00 or a bigger bag of chips for \$1.25, a piece of candy for \$0.25, \$0.50, or \$0.99, or a soda for \$0.99, \$1.25, or \$1.99.
- The store offers a special on cereal. A few months ago she was charging 3 small boxes for \$9.99, but then changed the price to 3 for \$10.00. The large boxes are \$3.99 and \$5.99 each.
- She may have a customer buy 2 loaves of bread at \$1.50 each, 1 box of \$3.99 cereal, 4 bags of \$0.50 chips, and 2 \$0.50 pieces of candy, with a total of \$9.99. She strongly believes this is the cause of her transactions having repetitive cent values.
- The store offers many products 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which account for many of the sales. The local residents are not even able to afford these small charges with your assistance.

The owner provided photographs of food items priced at these cents values. Based on the onsite store visit report, Appellant's inventory contains a profusion of inexpensive canned and packaged goods, single-serve food items and accessory foods. Due to Appellant's mostly low cost foods, the larger dollar transactions cited in the Charge letter would normally consist of multiple food products being purchased together. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The grocery specials 5 U.S.C. § 552 (b)(6) & (b)(7)(C) included: pizzas, chicken wings and legs, ground beef, cheese, bread, eggs, and milk. The store visit report documented a limited offering of meat products, i.e., beef (3 units), chicken (5 units), and eggs (4 units). Retailer Operations could not confirm the validity of these specials and determined that based on the inventory photos, it would appear Appellant would struggle to fulfill these specials on an ongoing basis. Appellant did not present a preponderance of evidence to support that these transactions were for eligible SNAP foods. No invoices of stock were advanced, and no itemized cash register tapes to align with the transactions listed were presented.

Attachment 2: Listed are 96 transactions in 44 sets of two or more transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Contentions:

- The store is located beneath a 15 unit apartment building. Many of the tenants shop in the store, and sometimes, they come down many times a day and/or send their children or other household members to the store with the Link card.
- She has no way of identifying whose Link card is being used.
- Some of the residents in this community may share, borrow, or even and sell their Link cards to one another.

- Some of the customers may come to her and ask if they could get a few groceries until they receive their Link benefits. Being compassionate for those single mothers or a parent with children, she will allow them to get some items on credit. When they receive their benefits, they'll come in and pay with the Link card early in the day and may return later to make a purchase.
- The store is the only food store in a radius of 4 city blocks. The area is populated with more than 600 apartments. Except for the store the area is a food desert.
- The recipients who shop at the store view it as their primary source of food and are regular customers.

Data shows that within a one mile radius of Appellant there are at least 38 authorized supermarkets, small, medium and large grocery stores, and other convenience stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Thus, the data supports that the flagged households did access other larger stores to use their SNAP benefits.

If credit accounted for these many data sets then it would be logical to see sets where one transaction would be to pay off the credit account, and a second transaction would be the result of the food items the recipient purchased on that date. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While one of the transactions may be explained as credit had sufficient supporting documentation been provided, the owner failed to provide evidence for the legitimacy of the additional high dollar transactions within the data sets. The second transactions are significant purchases at a convenience store that sells primarily low-cost merchandise and has no shopping carts or shopping baskets to carry the items around the store. The register is located behind a plastic barrier with a turnstile and limited counter space to place merchandise and transact large SNAP totals of eligible foods. Appellant stocks nonfood items. When the store applied in March 2016, the owner estimated that 20% of sales were for nonfood, non-eligible SNAP items.

Attachment 3: Listed are 697 transactions conducted by 237 different households, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

Contentions:

- The store offers a wide variety of groceries (dried foods, frozen meat and vegetables, and fresh meats such as chicken, pork chops, ground beef, etc.).
- Many customers purchase items that would be a complete meal for their family. She has a customer buy dinner for the night and maybe cereal and milk for the children to have breakfast in the morning or other breakfast food items.
- Those purchases can be quite costly, as the cost of food has increased with the cost of living.
- Some customers may purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) special with other items to last for a few days. Her store is a quick solution for food to prepare meals until customers are able to visit a supermarket.
- She has to believe that the cost of food and the fact that her store offers a full-line of grocery items is the purpose of the large transaction amounts.

Retailer Operations assessed the shopping patterns of five households. All of these sampled households shopped at larger stores including supermarkets and super stores. These

households also conducted suspicious SNAP transactions at Appellant for amounts that were often comparable to transactions conducted at these supermarkets and super stores on the same day or following day. On average, these households shopped at 27 different stores, including large grocery stores, supermarkets, and super stores, and traveled up to 28 miles to shop at these various stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Credit

Credit is often claimed by retailers in an effort to garner a lesser sanction than permanent disqualification. A firm that commits a credit violation is sanctioned with a one year disqualification period. If the retailer does not provide adequate proof of credit, the retailer shall be permanently disqualified for trafficking. A one year disqualification for credit cannot be entertained when by a preponderance of evidence it is determined that trafficking has more likely than not occurred.

Contentions:

- She only offers credit for food items. Her store inventory is 95% food items. The only cash items are paper products, aluminum foil, sandwich bags, etc. She does not accept Link for those cash items.
- The store is located in one of the highest poverty stricken areas in Chicago.
- There are many single parent homes consisting of mothers with a number of children. From time to time, these mothers will approach her asking if they can get a few groceries to feed their children until their Link benefits arrive.
- She had no idea that offering credit for Link payment was against the SNAP regulations. She has been a single mother and understands the struggle of making ends meet. Her intentions are to help out those who are in need and making sure the children have something to eat.
- Most of the customers do return and pay with their Link once it arrives; however, there are a few that do not come and pay and she takes a loss. This proves that she offers credit to customers out of the kindness of her heart and not as a source of gaining any wealth.
- Now that she is aware of accepting Link as a payment for grocery credit is a violation of the SNAP regulations, she will no longer offer credit or accept Link as a payment source.
- She asks if the one year disqualification can be disregarded as she was not aware that she was violating any regulations and the credit was for a good cause. She will no longer accept Link for credit payments.
- As far as documentation, she has a book that she writes down the person's name and the amount they owe and the date that should have the payment. As they pay, she scratches them out.

The owner provided three pages from her credit log. The documents do not include full customer names, recipient addresses, dates of purchases, EBT card numbers, or items purchased. Retailer Operations determined there was not enough information on the ledger pages to specifically determine what households they represent. Nevertheless, Retailer Operations made an attempt to match the tally totals that were legible on the pages to the transactions in the

Charge letter to identify the household. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Retailer Operations researched the Illinois State Administrative terminal to identify this household's address, which is approximately 2.3 miles from Appellant. During the review period, this household visited a total of 20 stores within a 9.21 mile radius of Appellant including: one large grocery, three supermarkets, and four super stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Retailer Operations found it implausible that a household would transact almost as much of its SNAP benefits at a marginally stocked convenience store, than at the eight larger, better-stocked firms it conducted transactions at during the review period. Given the volume of credit account activity asserted by the owner, Retailer Operations determined that the limited information presented as proof of credit was not adequate by a preponderance that the suspicious transactions listed in the Charge letter Attachments represent credit account transactions more likely than the result of trafficking.

When the owner signed the certification to become a SNAP retailer, she confirmed her understanding of and agreement to abide by program rules and regulatory provisions. She agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. 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. Despite agreeing to abide by SNAP rules and regulations, the owner now claims she allowed credit accounts, a violation of SNAP regulations and rules.

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 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 (page 9): "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, the owner was provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could be readily obtained. Regarding the owner's denial of the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether the owner demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. 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. While the owner contends that the transactions on the Attachment are legitimate, no itemized cash register receipts were advanced as evidence of eligible foods sold at Appellant during the review period. Further, no vendor invoices or receipts were provided as evidence of Appellant's acquisition and stock of eligible foods to support its SNAP redemptions. No bank records or federal or state tax records were provided, and no customer affidavits were submitted.

The evidence that Appellant violated the SNAP regulations is furnished on the Charge letter Attachments. Government analyses of stores caught in trafficking violations during actual on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. Therefore, that Retailer Operations used computer printouts of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking were occurring at Appellant, is as valid a means of establishing facts as direct evidence obtained through an onsite investigation and the eye witnessing of trafficking.

CIVIL MONEY PENALTY

No evidence was produced that Appellant met all the requirements to qualify for a CMP in lieu of permanent disqualification. To be considered eligible for a CMP, a firm must establish, by substantial evidence, its fulfillment of each of the criteria under 7 CFR § 278.6(i) of the regulations. The criteria are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Given these considerations, it is clear that the statute and the regulation allow no flexibility below the level of this stated standard. Appellant did not provide any documentation for consideration for a CMP in lieu of permanent disqualification. Thus, Retailer Operations properly denied a CMP.

CONCLUSION

Upon review of all of the evidence in this matter, the evidence more substantially supports a conclusion that the SNAP transaction activity at Appellant was due primarily to SNAP benefit trafficking. Retailer Operations' 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. Thus, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to Section 279.7 of the regulations (7 CFR § 279.7) with respect to applicable rights 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 the Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens
Administrative Review Officer

January 12, 2018