

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

Touba Darou Salam,

Appellant,

v.

Case Number: C0201439

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is not sufficient evidence to support a finding that Touba Darou Salam (Appellant) should be permanently disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for trafficking. The permanent disqualification decision is reversed.

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 25, 2017, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) 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 record shows that Appellant replied to the Charge letter October 31, 2017.

Retailer Operations issued a Determination letter dated November 29, 2017. This letter informed Appellant that it was permanently disqualified from 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 civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. Appellant was not eligible for the CMP because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP per the regulations cited.

By letter dated November 30, 2017, the owner appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated December 11, 2017. The owner provided additional information received December 27, 2017. Retailer Operations completed its review of this information February 21, 2018.

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). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

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

7 CFR § 278.6(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..."

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 SNAP EBT transaction data during the period of January 2017 through June 2017. The patterns of EBT transaction characteristics which are indicative of trafficking are:

1. There were 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. The majority or all of individual recipient benefits were exhausted in unusually short periods of time
4. Excessively large purchase transactions were made from recipient accounts.

APPELLANT'S CONTENTIONS

The following may represent a summary of the contentions however, in reaching a decision attention has been given to all contentions presented, including any not specifically recapitulated.

- I have all the transaction receipts since we have been in business with the FNS.
- All the transactions made, went to the same account which is the business account.
- I have regular customers that shop at my store every week either they pay with credit card, cash, or food stamp, in that case make them spent (sic) there (sic) benefit every month to the shop.
- I have provided all the receipts.
- There is a false accusation against me. I have never violated this program for any reason.

ANALYSIS AND FINDINGS

The primary issue for consideration in this case is whether or not Retailer Operations established by a preponderance of the evidence that Appellant engaged in trafficking which warrants a permanent disqualification. After a thorough review of all documentation, it is the determination of this review that Appellant's evidence, particularly the original vendor invoices and the partially itemized cash register receipts, indicate that the transactions in question were, more likely than not, legitimate purchases of eligible food. When this receipt evidence is considered along with the inventory invoice documentation and the multiple store visit reports and photographs, this review finds that the preponderance of evidence weighs in favor of Appellant.

There is not a way for this review to definitively conclude that trafficking did not, at any point, occur at the firm. However, a determination of permanent disqualification must be supported to such a degree as to conclude that trafficking is the most plausible explanation. In light of the

evidence and information in the record, this review finds that there are other legitimate explanations, besides trafficking, that could account for the unusual transaction patterns.

CONCLUSION

It is the determination of this review that the Appellant has met the burden of proving, by a preponderance of the evidence, that the transactions listed in the Charge letter were, more likely than not, allowable purchases of eligible food. Therefore, the determination to impose a permanent disqualification against Appellant is reversed.

RELEASE OF INFORMATION

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

March 6, 2018