

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

Village Liquor,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0236579

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 Village Liquor 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 Village Liquor.

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 December 18, 2020, 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 2020 through August 2020. 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 ten (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 ten (10) days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered by UPS on December 19, 2020.

The Appellant responded to the charges in a faxed letter on December 24, 2020. The Appellant generally stated it was not unusual for households to make multiple trips to the store on the same day or make multiple transactions in the same trip. The Appellant also stated that most of the large transactions were due to the store selling Red Bull and Monster energy drinks. The Appellant also provided four (4) pages of photocopied purchase invoices to document its food inventory. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

After considering the Appellant's response to the charge letter and the evidence in the case, the Retailer Operations Division issued a determination letter dated January 6, 2021. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 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 7 CFR § 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 postmarked January 12, 2021, 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 § 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 § 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 (1) 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 § 271.2 defines eligible food, in part, as:

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 § 278.6(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 2020 through August 2020. 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the charge letter and in its request for administrative review, in relevant part:

- The store has many customers that go in and out of the establishment. Many of these customers do their grocery shopping here and purchase many items in bulk via SNAP benefits which includes things such as Red Bull and Monster energy drinks, milk, soda, and even food such as ham, wieners, and rice.
- Provided with this statement is a receipt of stock purchases from wholesalers. There is a notable monthly pattern of restocking inventory for this establishment that equates to over thousands of dollars in just EBT eligible things alone. This shows that we do in fact sell a lot of EBT eligible items on a regular basis from regular shoppers. This explains the identical card numbers as these may have been regular customers that purchase throughout the day.

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 and Compliance History

The Food & Nutrition Service (FNS) authorized Village Liquor for the SNAP on April 12, 2013. The Retailer Operations Division classified the store as a convenience store based on reported sales and observed store inventory.

Village Liquor was issued a warning letter dated September 13, 2016 for accepting SNAP benefits in exchange for nonfood items in violation of 7 CFR § 278.2(a).

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 30, 2020 store visit conducted by an FNS contractor to observe the nature and scope of the store'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:

- Village Liquor operates out of a standalone building and is approximately 2,500 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store has two (2) cash registers and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- The checkout area consisted of small counter and window opening of approximately two (2) feet by two (2) feet behind a plastic barrier. There was small ledge on the customer's side for stacking food for purchase. The limited space for stacking food at the checkout area made it not conducive to conducting large transactions.
- The store did not take telephone orders or offer delivery services.
- There was no indication that the food sold meat bundles, fresh fruit and vegetable boxes or food in bulk. The store did have some cases of water and carbonated and non-carbonated beverages stacked on the floor in some areas of the store.
- The store had a storage area outside of customer view which was approximately 500 square feet in size. The storage area contained cases of beer and other alcoholic beverages.

As indicated by store personnel, the four (4) most expensive food items sold by the store consisted of:

- Two (2) 20-pound sacks of Calrose rice at \$24.99 per sack;
- Three (3) 7-ounce jars of Nescafe Instant Coffee at \$6.99 each;
- A single pint of Ben & Jerry's ice cream at \$6.29; and
- A single 20-ounce package of turkey ham at \$5.99 per pound.

The SNAP eligible staple food stocked by the store consisted mainly of inexpensive canned and packaged goods. There was no fresh meat, fish, or poultry for sale. There was only a smattering of fresh produce for purchase. Based on the store visit report and photographs, the store was likely ineligible under Criterion A at the time of the visit as it did not have a sufficient variety of staple food in the Dairy and Bread/Cereals categories.

The store sold a large amount of inexpensive accessory food items such as snack foods, ice cream, candy, potato chips, coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The ineligible items sold by the store included alcohol, lottery tickets, tobacco products,

automotive products, cleaning products, health and beauty aids, paper goods and general houseware.

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 offering similar food items.

Owner Accountability

Store owners are accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The store owner signed the SNAP application for Village Liquor on December 21, 2012 and the most recent reauthorization application on November 13, 2018. Both applications included a signed certification that all owners 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, and other violations including accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible non-food items.

Multiple Transactions by the Same Household 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 this convenience store’s stock and facilities and are thus indicative of trafficking.

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

It is also noteworthy that **even the smallest** transaction in each set was at least 2-3 times greater than the average transaction for a Riverside County convenience store during the review period. As stated previously, there is nothing special about the Appellant firm to justify it having multiple transactions so much higher than the average for a Riverside County convenience store.

The Appellant claims that these purchases involved bulk sales of Red Bull and Monster energy drinks, milk, soda, and food such as ham, wieners, and rice. This explanation is insufficient to explain the irregular transactions cited in the charge letter. The store visit did not indicate that the store sold any food items in bulk. Although a customer might purchase a case or two of Red Bull or Monster energy drinks it is unlikely that the sale of these products would be sufficient to cause such irregular transaction patterns especially over multiple transactions.

In conclusion, the store visit report and pictures show that is unlikely that SNAP customers would shop at the store and purchase such a large volume of items multiple times during a short time period. In addition, the store’s small checkout window and lack of sufficient 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 which would be required for the larger

dollar transactions. 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 regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this convenience store's stock and facilities and are thus indicative of trafficking.

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

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. 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.

The Appellant claims that these purchases involved bulk sales of Red Bull and Monster energy drinks, milk, soda, and food such as ham, wieners, and rice. This explanation is insufficient to explain the irregular transactions cited in the charge letter. The store visit did not indicate that the store sold any food items in bulk. Although a customer might purchase a case or two of Red Bull or Monster energy drinks it is unlikely that the sale of these products would be sufficient to cause such irregular transaction patterns.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, agency mapping systems document that, during the review period, there were nine (9) SNAP authorized stores within a one-mile radius of Village Liquor. This included a supermarket located only 0.15 miles away. Therefore, a lack of access to SNAP authorized stores does not appear to explain the Appellant store's excessively large transaction patterns. When a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Village Liquor. It is also noteworthy that other SNAP authorized convenience stores in the area do not exhibit the same irregular transaction patterns identified in the charge letter despite the shared neighborhood characteristics.

Lastly, the case record documents that the Retailer Operations Division conducted an analysis of three (3) selected households identified in the charge letter to analyze their shopping patterns at Village Liquor compared to their shopping patterns at other SNAP authorized stores. All of these households frequently shopped at Village Liquor. However, two (2) of these households also had access to, and shopped at, supermarkets and superstores. The remaining household shopped at a larger combination grocery store in addition to Village Liquor. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at Village Liquor on the same day or within a few days of shopping at these much larger stores. It is highly unlikely that a convenience store with a limited staple food inventory

like Village Liquor would have legitimate SNAP transactions comparable or larger than these SNAP authorized combination grocery stores, supermarkets and superstores with a better selection and variety of staple food items at likely better prices.

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 and shopping baskets support the Retailer Operations Division determination. 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 provided purchase invoices from May 2020 to August 2020 in order to show that Village Liquor had sufficient food inventory to support its SNAP redemptions. The case record documents that the Retailer Operations Division thoroughly reviewed these purchase invoices to determine if they could support the store's actual SNAP redemptions during the corresponding time period.

Even after applying a 40 percent markup to the store's documented food purchases, Village Liquor's actual SNAP redemptions exceeded its estimated gross retail food sales from May 2020 to August 2020. This unexplained shortfall of food inventory amounted **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** during the review period. The actual shortfall of food inventory would likely be greater considering that the store would have also sold food for cash or by credit/debit cards.

However, even if the store had a sufficient food inventory to support its SNAP redemptions, it would not explain the irregular SNAP transactions cited in Charge Letter Attachments 1 and 2. Violating stores often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking.

In conclusion, the administrative record documents that the Retailer Operations Division analyzed the firm's purchase invoices in comparison with the firm's total SNAP redemptions during the same time period and properly concluded the firm had an insufficient food inventory to justify its actual SNAP redemption amounts.

TRAFFICKING CIVIL MONEY PENALTY

The 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. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a

trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that “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 ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

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. 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 the Appellant’s EBT transaction record in comparison with actual store circumstances 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. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including 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 support 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 Village Liquor, 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. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

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

March 12, 2021