

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

Ward's Grocery,

Appellant,

v.

Case Number: C0204597

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 a permanent disqualification of Ward's Grocery (hereinafter "Appellant") from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Ward's Grocery.

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."

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from May 2017 through October 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

In a letter dated January 8, 2018, 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 between the months of May 2017 and October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a faxed letter dated January 12, 2018, the Appellant responded to the charge letter and disputed the allegations of trafficking. The Appellant stated that the area in which the store is located is a poor area and many people do not have cars. As such, it is common for multiple transactions to occur in a single day, as people return to the store several times to purchase as many items as they can carry home. According to the Appellant, the families in the area are large and make sizeable purchases at one time. The Appellant further argued that Ward's Grocery is the only SNAP-authorized store for many miles and if the store is disqualified, the SNAP participants will suffer. The Appellant also claimed that it personally depends on the business to pay for medical bills. Finally, the Appellant stated that it does not have sufficient funds to pay for a civil money penalty.

In support of these contentions, the Appellant provided three handwritten statements from customers who state that they depend on the store's SNAP authorization to feed themselves and their families.

After considering the Appellant's documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 15, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The 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, but that a CMP was not appropriate in this case 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 SNAP violations.

In a letter postmarked February 20, 2018, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It is noted that the Appellant submitted an additional letter of explanation on March 10, 2018, along with the same handwritten customer statements mentioned previously.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

The controlling law in this matter is found in the Food and 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(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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

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, either directly, indirectly, in complicity or collusion with others, or acting alone...

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(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter

shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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.

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...

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant does not understand how FNS came to the conclusion that the firm was engaged in trafficking.
- The people in the area depend on the store being able to accept SNAP benefits.
- It is a poor community and many people do not have transportation to get to a grocery store. The nearest store is about a 30-minute ride.
- The store carries all items that are required for SNAP participation. By the end of the month, the Appellant will have stocked its shelves at least three times.
- Many families will suffer if the firm loses the SNAP program.
- The Appellant owner has been in the store since 1974 and knows no other life. It will do whatever is necessary to keep the store authorized.
- The firm has never sold anything on SNAP other than food items. The firm has never had a violation against it in all the years it has been authorized.

- Appellant offers examples of households who visit the store to make large purchases, such as a woman who purchases about 10 cases of Diet Coke and 20 cans of Vienna sausage for her disabled husband.
- It is not unusual for customers to come to the store multiple times a day. Those that do not have a car will fill a wagon and walk their groceries home.
- No one ever said that the firm was limited to swiping EBT cards only once per day and no one ever said that there was a limit to how much a SNAP customer could spend. If the Appellant had known what the limits were, it would have followed them.
- As for even-dollar transactions, most of the food is priced in even-dollar amounts. For example, a bag of chips is \$2.00; a loaf of bread is \$2.00; a dozen eggs is \$2.00; and a case of Pepsi is \$5.00.
- Customers are worried about how they are going to obtain their groceries if the store remains disqualified.

In support of these contentions, the Appellant provided the same three handwritten statements that it had earlier provided to the Retailer Operations Division.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a September 22, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Ward's Grocery is a small convenience store, approximately 980 square feet in size, operating in the rural town of Trio, Williamsburg County, South Carolina.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets for customer use, which is not uncommon for stores of this size. Customers shopping in such stores generally do not purchase more food than they can carry in their arms.
- The store visit photographs show one cash register and agency records reflect the use of one EBT point-of-sale device.

- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is marginal in three of the four staple food categories and insufficient in the dairy category. On the day of the contractor's visit, the only dairy items in the store were evaporated milk and a package of cheese. With such limited staple food inventory, the firm would likely not be eligible for continued authorization in SNAP.
- Store visit photographs show very sparsely-stocked shelves and dusty packages of food – particularly canned foods. This is indicative of a store that neither sells nor purchases very much staple food inventory.
- The store sells a very small amount of hot food, such as hot dogs. Hot foods are not eligible for purchase with SNAP benefits.
- Available nonfood items at Ward's Grocery include alcoholic beverages, tobacco products, and miscellaneous household merchandise.
- The checkout area consists of a small countertop and a single cash register. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few small items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure. There are some items that are priced at even-dollar amounts, such as \$1.00 or \$2.00, and other items with prices ending in 9, such as \$0.99, \$1.89, \$2.49, etc. According to store personnel, transaction totals are not rounded up or down at checkout.

The available inventory of SNAP-eligible food at this store was limited at best. There was no indication that SNAP households would be inclined to regularly visit Ward's Grocery to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets, the very limited inventory, and the constricted checkout area.

Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 381 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such transactions are not supported by a specific pricing structure at the store, they are a strong indicator of trafficking in SNAP benefits.

The Appellant has stated that most of the food in the store is priced in even-dollar amounts. For example, a large bag of chips is \$2.00; a loaf of bread is \$2.00; a dozen eggs is \$2.00; and a case of Pepsi is \$5.00.

With regard to this contention, store visit photographs show that there are indeed several items that are priced in even-dollar intervals. Assuming that some customers purchased only even-dollar items when they did their shopping, it is likely that some of the transactions in Attachment 1 are legitimate. However, as noted earlier, store visit photographs prove there are also a large number of

items that end in 9. When a combination of items which end in various cents amounts are purchased together, the likelihood that the transaction would end in .00 is very remote.

Unfortunately, the Appellant has not offered any documentation, such as itemized cash register receipts, to prove that the transactions listed in Attachment 1 were legitimate purchases of eligible food. Without some kind of evidence to show that the transactions were valid, this review has little option but to conclude that the transactions listed in Attachment 1 were likely due to trafficking violations.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 15 sets of transactions (40 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering the amount of food it would take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that the firm has no shopping carts or baskets, it seems very unlikely that the transactions in Attachment 2 legitimate transactions.

The Appellant has contended that it is not unusual for customers to visit the store multiple times a day. It claims that those that do not have a car will fill a wagon and walk their groceries home and then return later for another purchase. The Appellant also argues that it was never told that the firm was limited to swiping EBT cards only once per day or told that there was a limit to how much a SNAP customer could spend. The Appellant claims that if it had known what the limits were, it would have followed them.

With regard to the claim that customers regularly shop at the store multiple times a day, the Appellant has unfortunately offered no evidence. Relevant evidence might have included itemized cash register receipts to prove that the transactions in question were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that that the questionable transactions were likely the result of trafficking violations.

As for the argument regarding transaction limits, it is important to note that as long as a SNAP purchase is for eligible food, regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how many times a household may use its EBT card at a particular location or how large an individual transaction can be. However, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other SNAP-authorized stores of similar size. This review does not contend that frequent or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 208 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of South Carolina. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in South Carolina was \$6.22. In Williamsburg County, the average was slightly higher, at \$6.66 per transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a small inventory of staple foods items and other eligible foods, and considering that the nearest SNAP-authorized store is more than two miles away and the nearest supermarket is more than nine miles away, it is probable that there would be an occasional purchase where the transaction amount is high, perhaps exceeding \$40.00 or even \$50.00. As such, there may be some legitimate SNAP purchases sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the absence of shopping carts and baskets, the very limited inventory, and the constricted checkout area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant has stated that the area in which the store is located is a poor community and many people do not have transportation to get to a grocery store. This argument implies that local customers use Ward's Grocery as their primary grocery store. The Appellant further claims that the store carries all of the items that are required for SNAP participation. Finally, the Appellant described an example of a customer making large purchases, specifically a woman who purchases about 10 cases of Diet Coke and 20 cans of Vienna sausage for her disabled husband.

As for the insinuation that customers use Ward's Grocery as their primary grocer, this does not appear to be true. According to SNAP transaction records, the same customers who shop at Ward's Grocery and who spend large amounts of money there also routinely shop at much larger stores, including supermarkets and superstores located within a few miles of the Appellant store. By all indications, SNAP households in the area are not limited in their transportation options.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering the very limited available inventory at Ward's Grocery, this review cannot comprehend what was available at the Appellant store that would not have easily been available at the superstore just minutes later.

As for the example of the woman purchasing large amounts of Diet Coke and Vienna sausage for her husband, this information does not prove that the transactions listed in Attachment 3 were legitimate purchases of eligible food. Anecdotal explanations without supporting documentation do little to convince this review that the suspicious transactions in this attachment were valid.

The transactions identified in the charge letter are highly unusual and substantially different from comparable stores in the area. As noted earlier, in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur.

Unfortunately the Appellant has not offered any evidence to verify that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Based on the above analysis, it is the determination of this review that Ward's Grocery likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Hardship to Appellant and SNAP Recipients

The Appellant has stated that the residents in the area around Ward's Grocery depend on the store being able to accept SNAP benefits and claims that many families will suffer if the firm loses the SNAP program. According to the Appellant, its customers are worried about how they are going to obtain their groceries if the store remains disqualified. To support this argument, the Appellant submitted three handwritten statements from customers who claim that they depend on the store's SNAP authorization to feed themselves and their families.

Similarly, the Appellant argues that Ward's Grocery has been in business since 1974 and the firm's owner knows no other life. This contention implies that the Appellant will also experience hardship if the firm is disqualified.

With regard to the handwritten customer statements and the contention that the community will experience hardship if the firm is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As for the assertion that the firm's owner would suffer if the disqualification were to be upheld, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would

forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's claims that the community will be adversely affected and that the firm may incur economic hardship based on the assessment of an administrative sanction do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

No Prior Violations

The Appellant, through counsel, contends that the firm has never sold anything on SNAP other than food items and has never had a violation against it in all the years it has been authorized.

Unfortunately, this contention does not provide a valid basis for dismissing the charges or for reducing the disqualification penalty. The law requires that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B).

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Ward's Grocery from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant firm, Ward's Grocery, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

August 24, 2018