

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

Washington Jiffy Mart,

Appellant,

v.

Case Number: C0220121

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Washington Jiffy Mart, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, 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(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated January 9, 2020.

AUTHORITY

7 U.S.C. § 2023 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 November 12, 2019, 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 April 2019 through September 2019. 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 the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In correspondence dated November 21, 2019, received on November 25, 2019, Retailer Operations Division informed Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from participation for a period of one year. Please provide documentation to support that food items were purchased on credit as noted in the telephone response provided on November 21, 2019. Please provide the requested documentation and any information, explanation, or evidence you have regarding the charges outlined in our letter on November 12, 2019, within 10 calendar days of your receipt of this letter. In a November 27, 2019 email, Appellant provided 16 color photographs of the store's stock and notes of alleged credit accounts, taped around the register area

In email correspondence dated December 4, 2019, Appellant replied to the November 12, 2019, charge letter and stated that the business is family owned and operated. It gave customers credit toward their food stamps because it did not want to say no when someone needed food for their children or the elderly needed help. Appellant stated that all credit will definitely be on a cash basis and asked for leniency as it understood its mistake and that it would not happen again. Appellant stated that it was providing photographs of the alleged credit slips and three letters from customers detailing their shopping experiences however there were two customer statements and two photographs of some store stock only. A video clip was provided showing the owner walking through the store and capturing post-it notes with names and a dollar amount listed. In the video, Appellant stated that not all tabs were for SNAP customers and that he also provided cash for gas and when a person was waiting for a check to clear, he would give them a cash advance

Retailer Operations Division issued a Determination letter dated January 9, 2020. The 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. The letter also stated that Retailer Operations Division 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, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated January 18, 2020, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence*. 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)...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...”

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.” 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 that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six month period of April 2019 through September 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

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

The Appellant made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. We were just trying to help our people in the neighborhood to last till they get their benefits. Customers have been coming to my store for years and they come a day or two before their SNAP benefits and say they will pay when they get their benefits.
2. After we found out that it is against regulation and we might get punished for it we stopped giving SNAP credit and I noticed in the past month or so that the SNAP sales dropped.
3. I have been excepting SNAP for 25 years and we never had a problem with the regulations.
4. We have never given cash for SNAP benefits. We apologize for any misuse of SNAP.

No additional information was provided during this review. The preceding may represent a brief summary of Appellant's contentions in this matter however, in reaching a decision, full attention has been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on October 17, 1994. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during an April 9, 2019, store visit to the business 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 EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- Store signage posted outside indicates that store name is Oakwood Jiffy Mart, CITGO
- One cash register and one POS device with no counter area (enclosed).
- Estimated to be approximately 570 square feet. Register, clerk and counter is enclosed in room behind Plexiglas with a small slit for payment purposes.
- No shopping baskets or carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store operates through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No food is stored in an area outside of public view.

- Store has storage freezers or coolers but not food stored off site. Freezer with meat products do not appear to be accessible to customers.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Members Mark bottled water (\$12.99/45 pack), Coke/Pepsi (\$11.99/24 pack) and Coke/Pepsi (\$5.99/12 pack).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, pet products, tobacco products, automotive products, gasoline, health and beauty aid and cleaning products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. No fresh fruits or produce, no fresh meat or poultry. Most meats are canned, packaged or frozen.
- A kitchen area for preparing food items with hot foods sold for onsite consumption.
- A deli or prepared food section. Stock is used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.
- Appellant was deficient in the dairy product category missing two varieties and six stocking units.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in 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 the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter - Multiple transactions were made from the accounts of individual SNAP households within a set time period

There were 25 sets of 83 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure. Other than its credit contention, Appellant did not offer, with its review request, any other explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 1 of the Charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Appellant contends that the Charge letter transactions are as a result of customers paying off credit accounts. With regards to this contention, it can be generally accepted that Appellant may have established credit accounts for some of the SNAP customers. However, sufficient evidence or documentation has not been presented in support of this contention.

Appropriate documentation may have included ledger books noting the following:

- The SNAP recipients names and addresses;
- A detailed listing of the alleged SNAP eligible food items purchased;
- The dates of the alleged SNAP eligible food purchases; and

- The dates the payments were made on the alleged credit accounts with SNAP benefits.

Moreover, when Appellant signed an FNS-252, “SNAP Application for Stores” certifying thereby that the owner read, understood and agreed with the conditions noted therein which included the following statement: “I accept responsibility on behalf of the firm for violations...including...:

- Trading cash for SNAP benefits (i.e. trafficking)
- Accepting SNAP benefits as payment for ineligible items
- Accepting SNAP benefits as payment on credit accounts or loans
- Knowingly accepting SNAP benefit payments from people not authorized to use them.”
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by Federal, State or local agencies...”

In addition, when the firm was authorized and subsequently reauthorized on a periodic schedule, Appellant was provided a package of material including:

- A copy of the SNAP regulations;
- An authorization packet, which included their authorization permit and other posting materials; and
- Training material, which would have included a training module issued on a DVD which also discussed the acceptance of SNAP benefits as payments on credit accounts were not allowed.

It is apparent Appellant received the material as some of it, such as the FNS Authorization number, which would have been necessary to have in order to procure an EBT Point-of-sale (POS) device. Therefore, the contention relating to credit account payments with SNAP benefits has been dismissed due to the lack of credible and verifiable evidence for all of the transactions noted in the Charge letter dated November 12, 2019. As such, this contention does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Based on the information provided there is no direct way to correlate the “credit tabs” with transactions listed in the charge letter or to a specific household. Additionally, the record reflects that when reviewing the video provided by Appellant and the store visit photographs, the post-it notes seen in the video do not appear to be visible in the store visit photographs. It is also noted that most of the posit-it notes appeared to be for even dollar amounts but the bulk of the charge letter transactions were not even dollar amounts. The largest transaction amount in the charge letter during the review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C) however some of the post-it notes were for amounts that were significantly higher.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock

There were 122 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. Other than its credit contention, Appellant did not offer, with its review request, any explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in Attachment 2 of the Charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

In addition, the store visit report and photographs document that the Appellant firm was deficient in dairy products staple food category. The store visit report tends to indicate that the firm may not have been eligible to maintain SNAP authorization on the day of the store visit.

Retailer Operations also conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Madison County area of Alabama. This is another strong trafficking indicator. Moreover, the record reflects that a review was conducted on the two customer statements and found that neither recipient could not be positively verified without additional information.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established the convincing case against Appellant, ownership 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 matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 1977, 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated November 12, 2019, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required

documentation to be considered for a trafficking CMP in lieu of disqualification therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the convincing case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Washington Jiffy Mart from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Washington Jiffy Mart is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to 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.

Under the Freedom of Information Act (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

June 16, 2020