

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

Williams Logistics,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0234678

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 a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Williams Logistics (Appellant), by the Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a), 7 CFR § 278.6(e)(1)(i) and 7 CFR § 278.6(i) in its administration of the SNAP when it imposed a permanent disqualification against Appellant.

AUTHORITY

7 U.S.C. § 2023, and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service (FNS).

CASE CHRONOLOGY

By Charge letter dated February 26, 2021, Retailer Operations informed Appellant it was charged with violating the terms and conditions of the SNAP regulations determined by a USDA investigation based on trafficking violations noted in Exhibits C and D. The sanction for trafficking is permanent disqualification. The misuse of SNAP benefits was also noted in Exhibits A, B, and C, that warrant a term disqualification. The investigation was conducted from December 9, 2020, through December 15, 2020, and outlined in the investigative report dated February 2, 2021. One owner replied to the Charge letter by email dated March 7, 2021.

By Determination letter dated April 8, 2021, Retailer Operations informed Appellant that it was permanently disqualified from participation as a retail food store in the SNAP in accordance with Section 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter states that the store was not eligible for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i). The firm failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter dated April 13, 2021, Appellant appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated June 17, 2021.

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 credible, relevant evidence that 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 (the Act), 7 U.S.C. § 2021, and § 278 of Title 7 of the Code of Federal Regulations (CFR).

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 trafficking means: "(1) 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;"... (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; (6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone."

7 CFR § 278.6(b)(2)(ii) states: "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(i) states: “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 Disqualification of retail food stores... and imposition of civil money penalties in lieu of disqualifications states in part: “(p) *Freedom of Information Act (FOIA) requests and appeals.* A FOIA request or appeal for records shall not delay or prohibit FNS from making a determination regarding disqualification or penalty against a firm under paragraphs (c) and (d) of this section, or delay the effective date of a disqualification or penalty listed in paragraph (e) of this section.”

SUMMARY OF THE CHARGES

The USDA conducted a compliance investigation of Appellant. Appellant was charged with conducting trafficking transactions as described in Exhibits C and D wherein the store personnel exchanged cash for SNAP benefits. The penalty for trafficking is permanent disqualification. Further, the violations in Exhibits A, B, and C, warrant a non-permanent disqualification period specified in Section 278.6(e) of the SNAP regulations. The store personnel exchanged common ineligible nonfood items for SNAP benefits including: kitchen bags, liquid hand soap, toilet paper, bar soap, deodorant and shave foam.

APPELLANT’S CONTENTIONS

In reaching a decision, full attention and consideration have been given to all contentions and submissions as presented, including any not specifically recapitulated.

- Ineligible sales are not the policy or practice of Williams logistics. If Williams logistics can’t provide video or audio evidence. The idea of our word against a sworn [sic] CI, is not in the best interest of our small store. Whereas it’s a no win situation.
- It is not the policy or practice to traffic snap benefits at Williams logistics. Also, I’m requesting TCMP.
- We never had an issue of no compliance. There was no snap within a 2 mile radius of walking traffic for the neighborhood. Snap makes up more than 60% of our annual sales. Suspension would crush what’s left of our business.
- We’re 4 months behind on rent. (-4000), we’re behind on we energy business and residential (-4000,-2000), currently in chapter 13 (-5700), -(13000 behind on mortgage) trying to keep the business afloat. Covid forced inventory prices to rise, while sales slid.
- Taking away snap would put a burden on me as well as the community who’s been supportive.
- There’s always been a policy and training in place. We’ve added new signs. Updated training an awareness.
- The USDA cannot find one violation prior to these allegations. To bring forth charges off the word of one CI is irreparable. It’s unfair that that USDA can destroy one reputation and business on the so called word of a CI. It’s almost impossible to fight a federal without video or audio evidence to clear ourselves.

- Trafficking was not the policy and practice at the firm and it did not occur.
- Any CI can say anything after approved amount rendered. Our record indicates approve sales amount only.
- The report states subject left store to get cash, but retrieved cash from the register. Why leave to get \$150 then retrieve \$150 from the register?
- The so called word of one should not be deemed to be fact.
- The firm asked for more than 1 CI to corroborate the firm practice trafficking over the last 2 $\frac{1}{2}$ years. CI stated firm “always do half.”
- USDA provide one civilian to corroborate firm practice trafficking over the last 2 $\frac{1}{2}$ years.
- Firm requests USDA provide audio/video that these transactions occurred.
- Firm has 3-5 assistance [sic] to corroborate trafficking is not our practice.
- Firm has 30-50 SNAP participant to sign petition that firm does not practice trafficking.
- Request some form of due process before permanent disqualification off the statements of one person. Ask that this be revered or modified.

ANALYSIS AND FINDINGS

The purpose of this review is to either validate or to invalidate the decision of Retailer Operations. This review is limited to the facts at the basis of Retailer Operations’ determination at the time it was made. The regulations establish that an authorized retail food store may be disqualified from participating in the SNAP when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Two Charge letter Exhibits recount the details of the violative trafficking exchanges by store personnel, who exchanged SNAP benefits accessed via an Electronic Benefit Transfer (EBT) card for cash.

Exhibit C states that the agent spoke with the clerk about purchasing various items for the store with food stamps in exchange for cash. The clerk then reportedly told the clerk that he would like to make a deal, but it would be easier to swipe the EBT card and give the agent cash. The clerk then said, “We usually do half,” and offered to give the agent half of the amount he swiped from the EBT card in cash. The exhibit recounts further discussion and the clerk then reportedly left the store to go to an ATM. The clerk handed the money to the contract investigator from an unknown location, “wrote down his phone number on the back of the receipt, and told me to call him or come back later to work out another deal.”

Exhibit D states that the contracted investigator asked Lamont for cash back off my EBT card, and he agreed. He offered to swipe the card for \$300.00 and give the agent \$150.00 in cash, and the agent agreed. The report recounts that the clerk said he needed to visit a nearby ATM to retrieve the cash, and told the agent to wait in the store. A few minutes later, Lamont returned to the store, and he entered \$299.98 into the EBT machine, pointed at the number, and said, “That’s how much you spent on groceries.” After the card was swiped, Lamont retrieved \$150.00 (1-\$10, 7-\$20) from the register and handed it to the investigator.

The record includes photos of the eligible and ineligible items acquired at Appellant during the multiple store visits. The record also includes copies of the EBT receipts for each Exhibit transaction conducted at Appellant. The is a photo of the reverse side of an EBT receipt with the

name Lamont written in red ink, with a phone number. Documents are present in the record of the items acquired by the investigator at Appellant, and donated to a non-profit organization. These are signed by the organization's representative and the investigator.

The Appellant has the burden of providing relevant, credible evidence that 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. The administrative review process and the FOIA process are separate. If the owners wish access to documentation, they must file a FOIA request directly with that office.

Ownership is accountable for the proper handling of SNAP benefit transactions. To allow the store owners to be free from accountability for the acts of persons whom the owners allowed to conduct store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. A review of the entirety of the case record supports that the preponderance of evidence supports that trafficking, as described in the regulations, did occur at Appellant. The regulations stipulate the FNS shall disqualify a firm permanently for trafficking.

CIVIL MONEY PENALTY

The regulations at Section 278.6(i) specify the criteria for a firm's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. A firm must submit a timely request for a CMP that shows substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations as detailed in Criterion 1 through 4. The record supports that Appellant submitted evidence, to support that it met the criteria for a trafficking CMP in lieu of permanent disqualification. Retailer Operations reviewed the submission and determined it was not adequate to meet any of the four regulatory criterion listed.

Retailer Operations determined the documentation advanced was not evidence of a written compliance policy and program as required by Criterion 1. At a minimum, such a policy should identify the termination policy for any employee found violating the SNAP regulations, identify corrective actions that may be taken following complaints of SNAP violations or irregularities committed by firm personnel, and elucidate the firm's internal review policy following a termination or complaint. Retailer Operations determined the documents supplied did not provide sufficient evidence to assert that there was an effective compliance policy and program in place prior to the issuance of the Charge letter. Thus, Retailer Operations found that Appellant did not meet Criterion 2

Retailer Operations reviewed the training documents and signature pages provided by Appellant, and found that these were not sufficient to meet Criterion 3 as specified in Section 278.6(i). Appellant failed to provide a record of dates of employment of firm personnel, or any contemporaneous documentation of the participation of the violating employee(s) in initial and

any follow-up training held prior to the violation(s). Appellant did not submit employment records, and Retailer Operations could not determine if the represented training occurred timely from the date of hire for the listed employees. Also missing was a statement regarding prohibited acts of the Food and Nutrition Act of 2008.

Retailer Operations determined that the firm did not meet Criterion 4 of the regulations. Retailer Operations noted that it was likely that ownership was directly involved in the trafficking transactions, and therefore aware of the trafficking. The report notes that the clerk self-identified as “Lamont,” and the description provided by the investigator of that clerk matches the description of the store owner, Lamont Williams, as obtained from the photo ID in the SNAP application file on record for Appellant. Thus, Retailer Operations denied a trafficking CMP.

CONCLUSION

The preponderance of the evidence supports the exchange for cash by store personnel, for SNAP benefits, that meets the regulatory definition of trafficking. The record also supports the violative sale of ineligible nonfood items, in exchange for SNAP benefits did occur at Appellant as described in the Exhibits charged. The lesser penalty for these violations is subsumed in the permanent disqualification for trafficking.

Upon review, it is decided that Retailer Operations’ denial of a trafficking CMP was in accordance with the applicable regulations. The permanent disqualification of Appellant as a SNAP retail food store is sustained. The effective date of this decision is thirty (30) days after delivery of the decision to Appellant.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023), and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this decision. 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 where Appellant’s owners 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 delivery 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

July 13, 2021