

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review
Alexandria, VA 22302**

Williams Grocery Corp,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0199330

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 Program¹ was properly imposed against Williams Grocery Corp (hereinafter “Williams Grocery Corp” and/or “Appellant”) and its owner/corporate officer of record, by the Retailer Operations Division of the FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against Williams Grocery Corp in a letter dated July 7, 2017.

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.

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¹ Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking “food stamp program” and inserting “supplemental nutrition assistance program” effective October 1, 2008

CASE CHRONOLOGY

The record shows that Williams Grocery Corp was initially authorized as a SNAP retailer on May 9, 2014. In a letter dated June 1, 2017, the Retailer Operations Division informed Appellant that it was in violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

The Retailer Operations Division record and letter of determination indicates Appellant provided oral and written responses to the letter of charges. Following documented review of the responses the Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated July 7, 2017, documented to have been delivered to Appellant on July 11, 2017.

The determination letter also states that the 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. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not request a CMP and did not submit evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated July 19, 2017, received in the offices of the Administrative Review Branch on July 21, 2017, Appellant, through its owner/corporate officer of record, submitted an appeal of the Retailer Operations Division’s assessment, requesting an administrative review of the action. The appeal 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 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)², 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of

² Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246.

the Code of Federal Regulations (CFR),³ part 278. In particular 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, *inter alia*:

... 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(e)(1)(i) states, *inter alia*:

“FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

7 CFR § 271.2 states, *inter alia*:

*“ **Trafficking** means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food...”*

7 CFR § 271.2 states, *inter alia*:

“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(a) states, *inter alia*:

*“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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) states, *inter alia*:

“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...”

³ Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

7 CFR § 278.6(b)(2)(ii), states, *inter alia*:

*“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).**”* [Emphasis added]

7 CFR § 278.6(i), states, *inter alia*:

*“FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in §271.2 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.”* [Emphasis added]

7 CFR § 278.6(e)(4) “Disqualify the firm for 1 year if:” (ii) “The firm has accepted food stamp benefits in payment for items sold to a household on credit.”

SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated June 1, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the six (6) month period of October 2016 through March 2017 and involved two (2) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #2 lists excessively large purchase transactions made from the accounts of SNAP recipients.

APPELLANT’S CONTENTIONS

In the July 19, 2017 request for appeal Appellant indicates that a request is being made for reconnection of the EBT/SNAP machine for the purpose of “Vending articles approved by law as is needed for my community & SNAP clients.”

The preceding represents only a brief summary of Appellant’s contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

With regards to Appellant's contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

Appellant Operations:

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on March 28, 2017. The record indicates the March 28, 2017 visit was authorized by the self-identified "owner". Materials reflecting observations made during the store visit describes the nature and scope of the Appellant's operation, as well as the stock and facilities.

Appellant is reported to be open seven (7) days per week from 7AM until 10PM on Monday through Friday; from 8AM until 10PM on Saturday; and, from 8AM until 9PM on Sunday. Williams Grocery Corp is shown in the store visit photographs to be located in an urban area, in a residential neighborhood, in a store front arrangement; with a retail footprint of approximately 576 square feet. No out of public view storage was declared by Appellant at the time of the store visit and the store visit contractor noted that the narrow aisles limited photography.

The administrative record classifies Williams Grocery Corp as a small grocery store, in accordance with FNS definitions, carrying a limited variety of fresh fruits and vegetables, a varied selection of frozen foods such as shrimp, and pizza, and includes a menu of deli hot and cold foods such as made-to-order sandwiches. There is a general variety and quantity of standard staple foods shown in the store visit contract materials. The four (4) most expensive items identified at the store visit included infant formula @ \$24.99; bags of rice @ \$11.99; frozen shrimp @ \$8.99 per package and coffee @ \$5.39 a can. The photographs indicate only limited supplies of the identified items.

Appellant is reported to operate with one (1) cash register that is not equipped with scanning technology; and, one (1) point-of-sale (POS) terminal; located behind a Plexiglas barrier with an approximate two-foot square opening. The Plexiglas barrier is situated over a top-open novelty ice cream freezer and the counter surrounding the checkout opening is stocked with a variety of merchandise displays.

The store visit materials document that there are no hand-held shopping baskets or shopping carts, available to support the delivery of purchases to the limited counter/checkout area for the completion of merchandise price totaling and payment. There is no separate identifiable area for the placement of goods staged to package for carryout.

Non-SNAP products and services reported in the store visit materials include tobacco products, mobile phones/cards; automobile products, health and beauty aids, cleaning products, and paper goods. An ATM/ wire transfer service is also reported as available.

The inventory at the time of the March 28, 2017 store visit is shown to include products in each of the four (4) staple food groups including:

- Six (6) varieties of dairy products consisting of two (2) units of sour cream/yogurts; six (6) to 20 units of; butter/margarine; and more than 20 units of each of the other four (4) varieties.
- Sixteen (1) varieties of fruits and vegetables with quantities of more than 20 in all but apples; canned peaches; and greens such as lettuce.
- Nine (9) varieties of breads and cereals, all but infant formula in quantities of 20 or more.
- Nine (9) varieties of meats, poultry or fish staple foods with between six (6) and 20 units of eggs and more than 20 units of eight varieties of canned and fresh/frozen/dried meats.

Certified photographs from the March 28, 2017 contracted store visit are presented below:



Photo #1 – Storefront from Street View



Photo #3 – Deli Area (contains fresh produce), Prepared Food Menu, and some refrigerated items

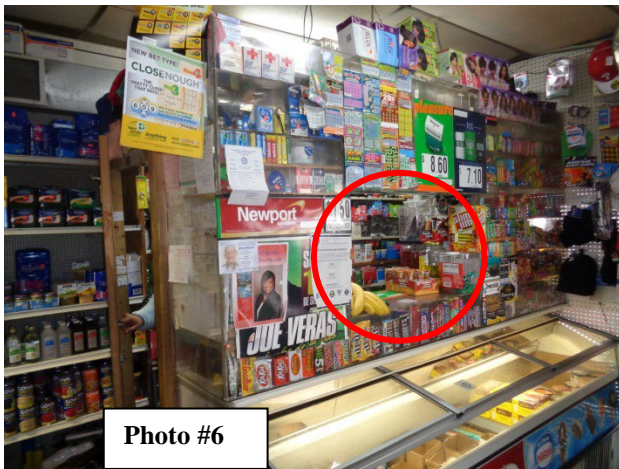


Photo #6



Photo #33

Photos #6 and #33 (above) show views of the checkout area, with the approximate two-foot pass-through opening (circled).

Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated June 1, 2017 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS.

The ALERT system does not make the final determination instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their development of an ultimate decision.

Attachment #1: Represents **multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes** and includes 72 transactions, grouped in 31 sets, where 21 households redeemed SNAP benefits **5 U.S.C. § 552 (b)(7)(E)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Attachment #2: Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 174 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** by 49 households at Williams Grocery Corp in the focus period. **5 U.S.C. § 552 (b)(7)(E)**.

In reply to the June 1, 2017 letter of charges Appellant, through both a friend who interpreted and counsel, indicated that the reason for the suspicious transactions in both attachments was that he had allowed his customers to pay credit accounts using their SNAP/EBT benefits in an effort to help them out. Appellant further provided that no evidence of the credit accounts was available because the practice involved only marking the name of the customer and the amount on a piece of paper which was then destroyed when the amount was paid.

Appellant failed to provide the names, addresses, SNAP card numbers, or affidavits for any households for whom credit had been allowed therefore no analysis of the contention could be conducted and the alternative sanction of disqualification for a one-year period could not be considered.

At the time of the initial SNAP authorization of Williams Grocery Corp in May 2014 Appellant's owner affirmed, through signature, agreement to abide by some standard SNAP regulations which are restated on the signature page of the Application materials. Specifically that document states, in relative part,

"I accept responsibility on behalf of the firm for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as, but not limited to:

- Trading cash for Supplemental Nutrition Assistance Program benefits (i.e. trafficking);*
- Accepting Supplemental Nutrition Assistance Program benefits as payment for ineligible items;*
- Accepting Supplemental Nutrition Assistance Program benefits as payment on*

credit accounts or loans; [Emphasis Added]

- *Knowingly accepting Supplemental Nutrition Assistance Program benefits from people not authorized to use them.*”

Additionally training materials were provided for review which included in part posters that restate the information provided above.

Comparison/Competitor Store Information:

The Retailer Operations Division reports having compared the transaction counts within specified dollar ranges for Appellant with the average small grocery store in Camden County, New Jersey during the focus period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Overall Appellant is noted on review to have redeemed 5 U.S.C. § 552 (b)(6) & (b)(7)(C) more SNAP in the focus period than the two (2) closest competitor small grocery stores while conducting very similar numbers of transactions. No distinct operational or inventory differences were identified to explain the differences.

Retailer Operations Division documents identifying 35 SNAP authorized stores within a one-mile radius of Appellant including one (1) medium grocery store. Expanding that distance to a two-mile radius indicates that there are 112 traditional authorized SNAP firm including three (3) supermarkets; two (2) superstores; one (1) large grocery store; 10 medium grocery stores and 48 competitor small grocery stores. The record reveals that there is no superior selection of staple foods; no identified specialty foods; no large package or bulk items; and no apparent price advantage identified at Appellant firm.

Household Analysis:

Retailer Operations Division documents having analyzed 12 households, comparing the incidences of identification of suspicious transactions in SNAP redemptions at Appellant firm, versus SNAP redemptions for those same households conducted at alternative authorized retailers.

Some examples of the findings indicate:

- The first household is shown to have completed (4) total SNAP transactions on November 28, 2016 with the first at a competitor small grocery store 5 U.S.C. § 552 (b)(6) & (b)(7)(C); the second and third transactions of the day were completed at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The second household review is noted to have completed multiple transactions each

of the months in the focus period, redeeming a majority of its SNAP allotment, at Appellant; shopping at only three (3) other SNAP authorized firms in the period. The material appears to support a conclusion that Williams Grocery Corp is the primary shopping venue for this household.

- The third household analyzed shows six (6) transactions between December 3, 2016 and December 5, 2016 with two (2) of those at Williams Grocery Corp on December 3, 2016 5 U.S.C. § 552 (b)(6) & (b)(7)(C), sandwiching a transaction at a nearby small grocery store 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The last two (2) transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were conducted at a nearby superstore.
- The fourth household, with two (2) transaction in November and two (2) in March at Appellant show that in November the household redeemed their SNAP benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In March the household conducted on the 4th and the 5th 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which was redeemed later on March 5, 2017 at a supermarket.
- On December 7, 2016 the fifth household conducted six (6) SNAP transactions as follows:
5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- The sixth household recorded four (4) transactions on October 18, 2016 spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP at a superstore shortly after noon; followed by a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Two (2) transactions at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C) followed 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On October 19, 2016 the household completed a SNAP transaction, again at Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The principle documented finding is that the shopping behaviors of those households is not routine to SNAP transactions conducted elsewhere; but instead almost exclusive to Appellant.

The documented finding is affirmed on review with the total transactions of each of the households found to include suspicious characteristics such as those identified for Appellant occurring only at Appellant.

CIVIL MONEY PENALTY

As previously indicated the July 7, 2017 determination letter advised Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations.

The July 7, 2017 determination letter indicates that no information was provided by Appellant for consideration and a review of the administrative record finds no evidence of materials or information timely provided.

Appellant has indicated that SNAP authorization “is needed for my community & SNAP clients”. However, the SNAP regulations at 7 CFR § 278.6(f)(1) provides that FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm’s disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.” That same regulation goes on to say that “A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.” Therefore, although Appellant indicates SNAP authorization is “needed” for the community and SNAP clients, the regulations preclude the imposition of such a penalty in lieu of permanent disqualification.

It is further noted that the record shows that there are 35 SNAP authorized retailers within the area, many of whom are documented to carry inventory similar to that of Appellant at similar prices.

Therefore, on review the Retailer Operations Divisions’ determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The data from Attachments 1 and 2 of the charge letter provide sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

The Retailer Operations Division analysis of Appellant’s EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visits provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits.

Therefore, based on the available empirical data, and in the absence of any reasonable or evidence supported explanations for the unreconciled transactions in the patterns as described, a conclusion can be drawn, through a preponderance of evidence that the majority of the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

Based on the discussion above, the decision to impose a permanent disqualification from participation in the SNAP against Williams Grocery Corp is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (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.

NANCY BACA-STEPAN
Administrative Review Officer

October 18, 2017