

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

**Windsor Supermarket,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201061**

**FINAL AGENCY DECISION**

It is the decision of the USDA that the record indicates that Windsor Supermarket, (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 September 15, 2017.

**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 August 22, 2017, 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 December 2016 through May 2017. 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 September 2, 2017, Appellant, through counsel, responded to the charge letter and generally stated that it strongly denied that the evidence provided in Attachment 1 and 2 proves trafficking or any other violations of SNAP regulations. Windsor Supermarket is not the traditional convenience store and the attached pictures will illustrate that this location is used by many nearby residents for the majority of their shopping needs. This location keeps a large variety of household foods items that are not necessarily found in traditional convenience stores. Windsor Supermarket offers such foods as Tilapia (\$15.99), fully cooked bacon (\$15.99), and frozen chicken and other meats. These items are expensive and the purchase of two or more items can quickly escalate to the total purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant, through counsel, also stated that when there are large purchases made by individuals they may sometimes be for neighborhood or community events, but cannot tell what the purpose is if a person comes and purchases cases of hot dogs or a bunch of bread. Ownership notices large purchases of meats and breads from time to time and it is not uncommon for some of these purchases to be in excess 5 U.S.C. § 552 (b)(6) & (b)(7)(C). At no point has Windsor Supermarket violated Section 271.2 of the SNAP regulations. Appellant provided 25 color photographs (of which 5 were duplicates) of the stores stock and an aerial view of the store's location.

After giving consideration to the Appellant's reply and evidence of the case, Retailer Operations Division issued a determination letter dated September 15, 2017. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations 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 September 28, 2017, 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 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 on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system...”

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 December 2016 through May 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in usually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

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:

- When comparing the sales numbers from January 2016 through November 2016 to the sales numbers from December 2016 through May 2017, the average monthly EBT sales as well as daily sales are nearly identical. The pattern of sales has been the same since my client has been at this location. (Appellant did not provide any documentation as evidence to support its claim)
- A purchase of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not unreasonable at a grocery store which has shopping carts, fresh meats, water, sodas and other items that can be purchased by the case.
- Windsor Supermarket is located in a densely populated residential neighborhood where many residents frequent this location. Some residents frequent the location multiple times a day and, in many cases, every day during the week. Customers who are in close proximity are able to buy many of their grocery items without having to visit a larger supermarket. They can buy sodas by the case, milk, eggs, bread, frozen meats and other items.
- Windsor Supermarket has many vendors that frequent the store on a regular basis. With items like milk, fruits, bread and canned items flying off the shelves, my client has made it a routine to visit these wholesalers every week to make sure there is inventory to keep up with the demands of the neighborhood.
- My client has shopping carts as well as smaller shopping baskets available for customers who decide to make larger purchases.

In subsequent correspondence dated October 30, 2017, Appellant, through counsel, provided 152 pages of purchase invoices and receipts for the review period, daily transaction reports for December 2016 and January 2017 thru June 2017, and two customer affidavits. It is noted that there were 29 pages of invoice/receipts considered ineligible as they were dated outside of the review period along with the June 2017 daily transaction reports. It is also noted that Appellant did not provide any EBT and corresponding cash register receipts in support of the transaction activity cited in the charge letter.

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 initially authorized the business as a convenience store on December 29, 2015. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the June 6, 2017, 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:

- Two cash registers and two POS device with two small counter areas partially obstructed by other smaller items available for sale. Registers contained behind a Plexiglas barrier.
- Estimated to be approximately 4000 square feet.
- No shopping baskets or carts available for customers. (Appeared to be 2 carts in the kitchen area with boxes in them and not available for customer use.)
- 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 stored in an area outside of public view. Store has storage freezers or coolers but not food stored off site.
- 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 Bacon (\$15.99), Beef Jerky (\$6.99), and Water (\$7.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, automotive products, health and beauty aids, hats and clothing items, lottery tickets, 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.
- Meat items in the freezer appeared freezer burnt and old. Appellant also has empty or broken coolers.
- Shelves were sparsely stocked and some stock contained a layer of dust or was outdated.
- No kitchen/prepared food area with hot foods sold for onsite consumption.
- No hot food sold but food is sold for on-site consumption with a microwave available for heating.
- No deli or prepared food section. Stock is not used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold.

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 individual accounts in unusually short timeframes.**

During the review period, there were 17 sets of 38 transactions that met the parameters of this attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant, through counsel, contends that Windsor Supermarket is located in a densely populated residential neighborhood where many residents frequent the location. Some residents frequent the location multiple times a day and, in many cases, every day during the week. Customers who are in close proximity are able to buy many of their grocery items without having to visit a larger supermarket. They can buy sodas by the case, milk, eggs, bread, frozen meats and other items. With regard to these contentions, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The transactions in this Attachment occurred in multiples of 2 or 3 transactions within a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period and do not contain the characteristics associated with a recipient purchasing forgotten items a short time after checking out or households returning to purchase a forgotten item or two.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second or subsequent transaction amount would be for more than a nominal amount. Additionally, it is questionable why households would visit Appellant multiple times in a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) period expending benefits in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when its stock is very limited, it carries no fresh meat or fresh seafood, the produce appeared in a slightly deteriorated state, meat/seafood items in the freezer appeared freezer burnt and old, it does not offer any specialty or ethnic foods, no indication of foods sold in bulk at high prices and does not carry food items that cannot be purchased at larger, better stocked stores.

Appellant, through counsel, contends that the store has shopping carts as well as smaller shopping baskets available for customers who decide to make larger purchases. Regarding this contention, based on the store visit photographs, the two visible shopping carts did not appear available for customer use as they were located in the back of the store and were filled with boxes. Also, there was no hand baskets noted during the store visit. There did not appear to be any basis for exceptional customer attraction, there being no great price advantage, profusion of specialty or ethnic goods, or special customer services rendered. In fact Appellant's stock contained outdated food items and some stock items contained a layer of dust which is indicative of low food purchases and restocking.

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 - Excessively large purchase transactions were made from recipient accounts.**

During the review period, there were 244 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. The contracted store visit indicates that this store does not sell any ethnic or specialty items that cannot be purchased at other stores in the local area. With 4,000 square feet of retail space and despite a mixed variety food product inventory, the large dollar transactions are not supported by Appellant's staple food inventory.

Appellant, through counsel, contends that Windsor Supermarket has many vendors that frequent the store on a regular basis. With items like milk, fruits, bread and canned items flying off the shelves, my client has made it a routine to visit these wholesalers every week to make sure there is inventory to keep up with the demands of the neighborhood. Appellant, through counsel also contends that a purchase of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is not unreasonable at a grocery store which has shopping carts, fresh meats, water, sodas and other items that can be purchased by the case. With regard to these contentions, the store visit photographs show that the fully cooked bacon, as indicated by Appellant as one of the high priced items responsible for the large transactions, had an expiration date of January 22, 2015, which was two and a half years prior to the store visit, the frozen meat appeared freezer burnt and old, there was a few individual pieces of frozen fish, and there were minimal amounts of fresh produce that also appeared in a slightly deteriorated state.

Appellant, through counsel, contends that when comparing the sales numbers from January 2016 through November 2016, to the sales numbers from December 2016 through May 2017, the average monthly EBT sales as well as daily sales are nearly identical. The pattern of sales has been the same since my client has been at this location. With regard to this contention, it is important to note that Appellant did not provide any documentation as evidence to support this claim however, an analysis of the eligible invoices/receipts, provided by Appellant, indicate that approximately 70 percent of the inventory purchases were for soda, snack and candy items which is also indicative of Appellant's stock as evidenced by the store visit photographs. This does not support Appellant's claim of selling large amounts of bacon and Tilapia. As previous noted, the bacon was outdated by two years and there were only a few individual pieces of frozen Tilapia available. Also, there was no indication that items were sold by the case or in bulk.

Retailer Operations Division compared the Appellant's SNAP transactions with the average convenience store in Fulton County, Georgia. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is questionable particularly when Appellant is stocked with mostly inexpensive packaged, canned, snack, and accessory food items and carries an assortment of single-serving beverages, and does not offer any fresh meat, limited amounts of fresh produce, and does not carry any specialty, ethnic or items in bulk that would sell at high prices.

The record reflects that there are 27 SNAP authorized retailers within a one mile radius of the

Appellant's store including 21 convenience stores, 5 small grocery stores and 1 superstore. Retailer Operations conducted an analysis of the shopping habits of two 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 Fulton County area of Georgia. This is another strong trafficking indicator.

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 a 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 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 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 recorded 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 small grocery stores in the State.

Government analyses of stores caught in trafficking violations during on-site investigations have



found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns cited in the letter of charges 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 August 22, 2017, 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 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's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Windsor Supermarket 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 Windsor Supermarket 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

February 5, 2018