

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

**YP Groceries Store,**

**Appellant,**

**v.**

**Case Number: C0204834**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon YP Groceries Store (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

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

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 January 17, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of June through November 2017. The letter noted that the sanction 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). The record reflects that the SNAP Office received and duly considered Appellant’s reply to the Charge Letter. By a letter dated March 14, 2018, Appellant was informed that it was permanently disqualified from participation as a retail store

in the SNAP, effective upon Appellant's receipt of said letter; the letter further instructed Appellant that it may request an administrative review of the decision. On March 22, 2017, Appellant requested an administrative review of the ROD Office's decision; the request was granted.

### STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating 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, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...a disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & 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(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, in part:

**Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR §278.6(f)(1) states, in part:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR §278.6(i) states, in part:

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...

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

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in §278.6(b)(1), the firm shall not be eligible for such a penalty.

#### **SUMMARY OF THE CHARGES**

- A series of multiple SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 1).
- A series of excessively large SNAP transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 2).

#### **APPELLANT'S CONTENTIONS**

In Appellant's reply to the Charge Letter, and in its written request for review dated March 22, 2017, it was argued that:

1. The firm provides discounts to customers who buy a lot of food at once, which results in large transactions. Other reasons for large transactions include various celebrations such as birthday parties, baby showers, festivals, etc., in which customers buy lots of food, drinks and snacks. The store also sells expensive and bulk food items. If large transactions are a problem, Appellant requests that the agency put a cap on SNAP purchases
2. After replying to the ROD Office's Charge Letter, Appellant received no other letter relating to the matter other than the ROD Office's Determination Letter dated March 14, 2018.
3. The business is ownership's main source of income; 80% of customers are SNAP recipients. Appellant is careful not to misuse its source of survival by engaging in illegal activities.

## ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on December 6, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 650 square feet of store space.
- No optical scanners.
- No shopping carts or baskets.
- No night window or plastic checkout barrier used.
- No evidence of wholesale business.
- Prices in standard retail variations of \$.x9.
- One check-out area/counter.
- One cash register and one card reader.
- No food stored outside of public view.
- No storage coolers or freezers.
- No food stored offsite.
- No telephone, online or other orders.
- No delivery offered.
- No transaction total rounding.
- There are fewer than four SNAP-eligible items priced at \$5.00 or more.
- All above questions completed in collaboration with store personnel.
- The firm also stocked a large amount of tobacco products, health and beauty products, paper goods, clothing, laundry detergent, cleaning products, automotive supplies, DVDs, housewares and other non-food products.
- Empty/broken/unused coolers/freezers observed.
- No kitchen/food preparation area.
- No hot food sold.
- No deli section.
- No meat/seafood bundles/specials or fruit/vegetable boxes offered/sold.
- Store was cluttered and disorganized. Photos: 1, 6, 7, 11, 12, 13, 25, 31, 35 and 41.
- Empty/sparsely-stocked shelves and coolers. Photos: 3, 5, 7, 10, 14, 15, 17, 19, 32, 33, 37, 38, 40, 41 and 42.
- The freezer and cooler in the back of the store did not have working interior lights. Pizza oven does not work. Broken cooler used to store T-shirts. Manager did not know if either would be repaired. Narrow aisles and tall shelves.
- Typically to marginally-stocked small grocery store in all relevant respects. Photos: 2, 3, 6, 7, 10, 12, 15, 16, 17, 19, 23, 33, 37, 39, 40 and 41.
- Check-out counter approximately 2 X 1 feet and surrounded by snack foods, health and beauty products, housewares, cell phone accessories, incense, over-the-counter medicines and other non-food products.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 2 by 1 feet of useable space) but was otherwise surrounded by snack foods, health and beauty products, housewares, cell phone accessories, incense, over-the-counter medicines and other non-food products. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a marginally-stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small grocery store in the state of Pennsylvania during the analysis period was \$9.33, reflecting that large purchases are not routinely made in such stores.

Appellant does not directly address Attachment 1 of the Charge Letter. While there are legitimate reasons why a SNAP recipient or household member might return to a convenience store or a small grocery store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a marginally-stocked small store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. The record reflects, as noted above, that the Appellant firm was a marginally-stocked small grocery store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Regarding contention 1 above, Appellant provides no further documentation of the specific nature and extent of its purported discount practices. The discount policy is described in any detail; Appellant does not indicate the amount or percentage of such discounts, the amount of purchases required to obtain such discounts and provides no specific examples of such discounts being applied. No register receipts documenting such sales, showing the amount or percentage of the discount, or the items purchased, exists in the record. Appellant provided no sales or inventory records to support its contention that large sales occurred routinely in the store. As noted in the foregoing, the firm was found on the day of the store visit to maintain empty/sparingly-stocked shelves and coolers, typically a sign of low turnover. The firm's stock consisted primarily of inexpensive snack food items. Much of the store inventory was in non-food products. The ROD Office notes that customers conducting implausible transactions at the Appellant firm were shopping at super stores, supermarkets and better-stocked grocery stores on or about the same day, calling into question what the customers could obtain at Appellant's marginally-stocked store that they could not obtain at the better stocked and quite likely more competitively-priced stores.

The ROD Office points out that Appellant's average SNAP transaction during the analysis period (June through November 2017) was more than double the state store-type average and the firm's SNAP redemptions were approximately 25% higher than the state store-type average. ROD also notes that the numbers of transactions in several bands (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) ranged from over two to over 30 times that of the county store-type average.

The ROD Office notes that, at the time of the sanction decision, there were 12 SNAP-authorized firms with comparable or greater staple food inventory, including five combination grocery/other stores, two medium grocery stores and five other small grocery stores. Agency data indicates that there are currently 35 SNAP-authorized firms within a one-mile radius, including two medium grocery stores (one at just under one-quarter of a mile from the Appellant firm), five combination grocery/other stores (one at just under one-third mile), five small grocery stores (four from just over one-third mile to just under one-half mile) and 18 convenience stores (five from under one-quarter mile to just under one-half mile). As noted by the ROD Office, many customers clearly had access to and routinely shopped at better-stocked super stores, supermarkets and grocery stores in the immediate area, again calling into question what customers were able to obtain at Appellant's marginally-stocked small grocery store that they were not able to obtain at much better-stocked and more competitively-priced stores. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

Regarding contention 2 above, the agency's due process procedures are two-fold in nature: a retailer aggrieved by an agency action is afforded an opportunity to reply to the charges specified by the ROD Office; Appellant has availed itself of this first aspect of the due process procedures in the form of a written reply to the ROD Office. As noted, the record reflects that the ROD Office duly considered this reply. Following said consideration, the ROD Office advised Appellant of its decision to impose a permanent disqualification.

The second level of due process involves an administrative review, of which Appellant has likewise availed itself and in the process of which Appellant was granted an additional three weeks to provide further information in support of the request for review. Appellant did not provide information/evidence in addition to its initial review request. The purpose of the administrative review process is to ensure that firms aggrieved by FNS's adverse actions have the opportunity to have their position fairly considered by an impartial reviewing authority prior to that adverse action becoming final. Appellant has been duly provided, and has taken, the opportunity to present to USDA through the administrative review process whatever evidence and information it deems as pertinent in support of its position that the ROD Office's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to the ROD Office, 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. Appellant has exercised its opportunity to reply to the Charge Letter and its administrative review rights, and by so doing has availed itself of the full complement of the agency's statutory and regulatory obligations with regard to due process.

With regard to contention 3 above, the issue of hardship worked upon retailers or SNAP clients is not a consideration under the statute or regulations in decisions to disqualify firms due to SNAP-benefit trafficking. The only alternative to permanent disqualification, once trafficking is established, is to impose a trafficking civil money penalty. Appellant was advised of this provision in the SNAP Office's Charge Letter, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified (postmarked within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty. As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty was appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i). It is further noted that said provisions specify that no extensions to this time period, in which a firm may provide evidence in support of its request for a civil money penalty, may be granted.

### **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

### **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 provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY  
Administrative Review Officer

October 10, 2018