

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

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June 16, 2023

Mansoor Ansari, Attorney  
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Alpharetta, GA 30022

RE:



Dear Counselor:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), in response to your request for administrative review by email correspondence of April 6, 2023, filed on behalf of Rw Star Deli Inc. and its owner of record, Rebecca Wang. Also included therein is a statement regarding relevant rights to a judicial review.

It is the decision of the USDA that there is insufficient evidence to support a finding that a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Rw Star Deli Inc. by the Retailer Operations Division of FNS. However, there is sufficient evidence to support a **one-year disqualification from the SNAP** for the extension of credit to SNAP customers.

The record shows that the permanent disqualification action took effect on March 31, 2023. As of the date of this Final Agency Decision, the disqualification sanction remains in effect. Accordingly, the firm may not reapply for SNAP authorization until one year after March 31, 2023, the implementation date of the disqualification decision.

Sincerely,

A handwritten signature in black ink that reads "Lorie L. Conneen".

LORIE L. CONNEEN  
Administrative Review Officer

Enclosure – Final Agency Decision

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

**Rw Star Deli Inc.,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0258462**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is insufficient 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 Rw Star Deli Inc. (hereinafter “Rw Star Deli Inc.” or “Appellant”) by the Retailer Operations Division of FNS. However, the evidence supports a one-year disqualification from the SNAP for the extension of credit to SNAP customers.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Rw Star Deli Inc..

**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.

**CASE CHRONOLOGY**

In a letter dated January 23, 2023, the Retailer Operations Division informed the Appellant that Rw Star Deli Inc. was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." 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). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on January 24, 2023.

The record reflects that by written correspondence of January 27, 2023, the Appellant's counsel requested an extension in time for providing a response to the letter of charges. By letter of January 30, 2023, the Retailer Operations Division granted counsel's time extension request to March 5, 2023. In that letter counsel was informed that the time to request a civil money penalty in lieu of a permanent disqualification and to provide the documentation to support such a request cannot be extended.

In responses to the Retailer Operations Division of January 27, 2023, March 2, 2023, March 6, 2023, March 7, 2023, March 8, 2023, March 9, 2023, March 16, 2023, March 17, 2023, and March 20, 2023, the Appellant, through counsel, replied to the letter of charges. In the March 7, 2023 response, the Appellant cited credit extension to SNAP customers as one of the explanations for the SNAP transactions documented in the charge letter. By letter of March 8, 2023, the Retailer Operations Division requested the submission of documentation to support the Appellant's credit extension contention. The Appellant was informed that it must submit the credit extension documentation within 10 calendar days of receipt of the March 8, 2023 letter. Counsel was subsequently granted an extension in time by the Retailer Operations Division to provide supporting documentation. The Appellant, through counsel, submitted additional responses to the letter of charges. The record reflects that the Retailer Operations Division received and considered each of the Appellant's responses prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated March 31, 2023, informing the Appellant that Rw Star Deli Inc. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In an email correspondence of April 6, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated April 18, 2023. In email correspondences of May 6, 2023, May 8, 2023, and May 9, 2023, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

### **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 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.

### **CONTROLLING LAW**

The controlling statute in this matter is covered in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 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. There also exist FNS policy

memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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(a) states, inter alia:

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 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, inter alia:

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 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...

7 CFR § 278.6(f)(1) states, inter alia:

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, 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 ...

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

(ii) 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 as specified in § 278.6(i), 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].

(iii) 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 penalty. [Emphasis added].

7 CFR § 278.2(f) states, inter alia:

Paying credit accounts. SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year. 7 CFR § 278.6(e) states, in part: FNS shall take action as follows against any firm determined to have violated the Act or regulations... The FNS regional office shall: (4) Disqualify the firm for 1 year if: ... (ii) The firm has accepted SNAP benefits in payment for items sold to a household on credit.

7 CFR § 278.6(e) states, inter alia:

FNS shall take action as follows against any firm determined to have violated the Act or regulations... The FNS regional office shall: (4) Disqualify the firm for 1 year if: ... (ii) The firm has accepted SNAP benefits in payment for items sold to a household on credit.

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from March 2022 through August 2022. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual households within a set time period; and
- There were EBT transactions conducted 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 questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant strongly believes that USDA wrongfully concluded that trafficking has occurred based on a statistical analysis of the data generated by the store's EBT transactions over a six month period.
- It appears that the statistical model or survey had been used to incorrectly determine that the normal transactions in this store somehow significantly exceed the normal practice for this type of firm. As it compares to an undercover investigation, USDA has failed to set forth which activities constitute trafficking activities.
- The Appellant has not been cited for prior SNAP violations.
- The Appellant denies the trafficking charges. The Appellant has never violated any laws related to Section 271.2 and 278.6(e)(1). The Appellant's transactions are based on the sale of qualified merchandise.
- With regard to the transactions documented in Attachment 1, there are 148 transactions that occurred within 180 days which is less than one half of one transaction per day. Only 17 of these transactions sets were made in under one hour total. So, the other 21 transaction sets occurred over more than one day.
- The Appellant is unaware of any rule that says that EBT benefits cannot be used 10 hours apart or even one hour apart. The Appellant cannot limit or control the frequency with which customers shop.
- If the Appellant told customers they are using their EBT cards too frequently customers would be upset and shocked.
- During the pandemic, the Appellant extended credit to SNAP customers to purchase essential foods. The majority of these transactions are populated with the same couple of EBT cards. These were loyal customers of the store. Employees broke purchases into two transactions—customers shopped for their weekly groceries and paid off the credit after the initial purchases have been paid off.
- The Appellant has discontinued its credit extension allowance to SNAP customers.
- Many customers will participate in what is called “strategic shopping” where a transaction is made to see how much money is left on the SNAP card. If the payment goes through, then another payment is made in order to purchase the rest of the items.
- Customers may also separate transactions for each individual in a family in order to know how much money is spent on each individual. Hence, multiple transactions are not unlikely.
- With regard to the transactions documented in Attachment 2, there are only 506 transactions that occurred over the six month review period. This amounts to less than three such transactions per day.
- A large transaction is defined by a transaction that is at least \$36.75. This is a very low threshold when you consider the price of milk, juice, cold cuts, and staples such as rice and bread.
- There are only eight transactions that are over \$100.00. There is only one transaction over \$123.60 which was for \$448.25. This one large transaction is referenced in the employee's statement which notes that a family made three trips to the store to pick up items for a party.
- The Appellant holds itself out as a fully functioning grocery store that focuses on selling various meats and fresh vegetables and fruits. The Appellant has a high variety of inventory and carries multiple staple goods such as deli products, cold cuts, fresh vegetables, rice, etc.
- Most of the store's customers buy groceries for their entire household as would a customer at a supermarket.
- The store has optical scanners as well as shopping baskets. The Appellant has four baskets, not just two like what is indicated in the store visit report.

- The Appellant has a kitchen and food prep area as well as coolers and freezers. There is also hot food prepared and made-to-order sandwiches.
- The store uses Grub Hub for delivery plus its own delivery.
- During the review period, the Appellant was the only SNAP authorized retailer that sold items to the local population.
- The Appellant has built long-term meaningful relationships with local SNAP customers and provides necessary foods, drinks, and child care products.
- The Appellant is not only a deli and grocery but is also a WIC Program vendor. Other stores in the area do not provide the same level of service to customers.
- Customers come regularly to purchase weekly groceries for their entire households.
- The Appellant sell many items in bulk, which is indicated by the many shopping baskets at the store.
- The Appellant sells items that can be costly such as bags of rice which can cost upwards of \$60.00. If a customer purchases two bags of rice, they will pay more than \$100.00 in one transaction.
- Inflation has greatly increased the cost of groceries. With inflation remaining high, transactions for \$40.00 to \$50.00 should not be considered overwhelmingly large.
- A purchase of a pound of ham and turkey, a pound of American cheese, a loaf of bread, a prepared salad, and a 40 ounce jar of peanut butter would be over the \$40.00 threshold.
- During the pandemic, customers purchased more as they had additional benefits provided to them. The Appellant also saw increased cash and credit card purchases during the pandemic.
- Submitted are inventory purchase invoices and stock photos to substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period.
- A SNAP disqualification would impose a financial hardship on the Appellant.
- A SNAP disqualification would impose a hardship on area participating SNAP households. The Appellant is the only food store in the area that is open 24 hours a day, 7 days a week. The store targets exclusively Eastern-Europeans, Mid-Europeans, and Russians. Other authorized SNAP stores were closed during the review period so customers relied upon the Appellant for their nutritional needs. There are numerous parks, schools, and community centers in the area. Many local families depend on public transportation to travel or often walk to the store.
- To prevent violations such as trafficking from occurring, the Appellant has created a multi-step training program. The Appellant trains each employee by first providing him/her with the USDA SNAP reading. It also addresses which items can and cannot be purchased with SNAP benefits. Each employee is also asked to watch the official cashier video created by USDA which includes an overview of the SNAP and the Do's and Don'ts. Each new employee then works side by side with the owner or manager for a while to evaluate whether the employee understands the SNAP rules. It is only after weeks of working together that the new employee is allowed to work alone. The Appellant also regularly checks on the USDA website to see if there is any updates on the SNAP rules to ensure employees have the most up-to-date knowledge.
- The Appellant implemented an effective compliance policy and program to meet Section 271.2 of the SNAP regulations.
- With regard to Criterion 1, since being authorized as a SNAP retailer, the owner has been active in ensuring full compliance with her employees and their obligations to FNS. A photocopied booklet is provided to each employee and issues and concerns regarding EBT

processing are addressed as questions and issues arise. The Appellant's compliance policy states the following: (1) There is no exchange for cash for EBT card swipes; and (2) and only sell qualified EBT grocery items to your customers. Any employee who does not follow the SNAP rules and guidelines will be immediately terminated.

- With regard to Criterion 2, the firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter.
- With regard to Criterion 3, the firm developed and instituted an effective training program as specified in Section 271.2. The training program implemented by the Appellant includes: A review of the FNS handbook with each new employee and instructions to call USDA or the store owner if employees have any questions.
- With regard to Criterion 4, firm ownership was not aware of, did not approve of, did not benefit from or was not in any way involved in the conduct or approval of the trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm.
- The Appellant has a training policy in place for its employees. Using the url: [http://www.fns.usda.gov/sites/default/files/Retailer\\_Training\\_Guide.pdf](http://www.fns.usda.gov/sites/default/files/Retailer_Training_Guide.pdf), the Appellant has provided one-on-one, in-store training and a copy of the manual to all employees and store operators. The contents of the manual are discussed and reviewed with employees and operators of the business on a semi-annual basis. Each employee is reminded by the Appellant to never engage in the following: (a) Giving back cash in return for EBT purchases; (b) Disallowing sales to known friends of the card user if it appears as though the card user is outright paying for the groceries of a person that is not part of their household; and (c) Disallow sales on unqualified EBT items.

In support of these contentions, the Appellant, through counsel, submitted the following information for review:

- Statement of store owner;
- Statement of employee;
- SNAP training records;
- Store Policy signed by owner and employee;
- SNAP Program Operation Agreement signed by owner and employee;
- Customer affidavits (16 total);
- Customer statements (29 total);
- Petition signed by approximately 150 customers;
- Numerous food stock photos;
- On-line transaction summary to compare credit card transactions to EBT transactions;
- Comparison between EBT, credit card, and WIC transactions (three receipts for WIC purchases were provided);
- Numerous inventory purchase invoices/receipts;
- Numerous cash register receipts for cash transactions;
- Credit account logs;
- List of inventory vendors; and
- Photos of food items with accompanying register receipts indicating cash transactions that occurred outside of the review period.



## **ANALYSIS AND FINDINGS**

A review of the evidence in this case does not support the Retailer Operations Division's determination of permanent disqualification. Accordingly, it is unnecessary to address the Appellant's contentions in this matter regarding trafficking.

The Appellant admitted to accepting SNAP benefits in payment for items sold on credit. Accepting SNAP benefits in payment for items sold on credit is a violation of the SNAP regulations and carries a penalty of a one-year SNAP disqualification. Accordingly, the determination is modified to a one-year disqualification in accordance with 7 CFR § 278.2(f) and § 278.6(e)(4)(ii).

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

### **No Prior Violations**

The Appellant is correct that the firm has no previous history of SNAP program violations or warnings. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Corrective Action**

With regard to the Appellant's contentions with respect to the implementation of corrective actions to ensure that future SNAP violations do not occur, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Financial Hardship**

With regard to the Appellant's contention that a SNAP disqualification would impose a financial hardship on the firm, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA.

Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

The Appellant contends that a SNAP disqualification would impose a hardship on area SNAP customers.

The record indicates that the Appellant is not eligible for a hardship civil money penalty (CMP) in lieu of a one-year SNAP disqualification under 7 CFR § 278.6(f)(1). That regulation reads, in part, "FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to [SNAP] 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." [Emphasis added]. Please note that internal FNS policy memoranda clarifies the regulation by defining "in the area" to mean within a one (1.0) mile radius for an urban store such as Rw Star Deli Inc.

The case record documents that a one year disqualification of Rw Star Deli Inc. would not cause a hardship to SNAP households as there are other comparable or larger SNAP authorized stores located within a one mile radius of the Appellant firm. Rw Star Deli Inc. is classified by FNS as a convenience store that does not carry any specialty or ethnic foods that cannot be found at other area authorized stores. Agency mapping systems document that there are 105 SNAP authorized stores of comparable or larger size located within a 1.0 mile radius of the Appellant firm, including 13 super stores (one of which is located 0.01 miles from the subject store) and 4 supermarkets.

Based on the evidence, the disqualification of Rw Star Deli Inc. would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the decision not to access a hardship CMP in lieu of a one-year disqualification is sustained as appropriate.

### **CONCLUSION**

Based on a review of all available information in this case, the permanent disqualification against Rw Star Deli Inc. is modified to a one-year disqualification due to the Appellant's violations of SNAP regulations pertaining to credit extension to SNAP customers.

The record shows that the permanent disqualification action took effect on March 31, 2023. As of the date of this Final Agency Decision, the disqualification sanction remains in effect. Accordingly, the firm may not reapply for SNAP authorization until one year after March 31, 2023, the implementation date of the disqualification decision.

In accordance with 7 CFR § 278.1(b)(4), at the time of any new application for participation in SNAP, the firm will be required to submit a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the Program. This bond requirement is due to the firm's disqualification of a period longer than six months.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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 delivery of this Decision.

Under the Freedom of Information Act, 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.

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

June 16, 2023