

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

Supplemental  
Nutrition  
Assistance  
Program

Retailer Policy  
Division

Administrative  
and Judicial  
Review Branch

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March 21, 2024

Mansoor Ansari, J.D,  
Ansari Tax Law Firm  
2650 Holcomb Bridge Road Suite 110  
Alpharetta, GA 30022

RE: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Counsel:

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 an administrative review dated December 12, 2023.

It is the decision of the USDA that there is insufficient evidence to support a finding that a permanent disqualification against One Leaf from participating as an authorized retailer in the Supplemental Nutrition Assistance Program. Therefore, the Retailer Operations Division's determination is reversed.

Sincerely,

A handwritten signature in blue ink that reads "David A. Shively".

DAVID A. SHIVELY  
Administrative Review Officer

Enclosure

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

██████████

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number:** ██████████

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support a permanent disqualification of ██████████ (Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP). Accordingly, the Retailer Operations Division’s determination is reversed.

**ISSUE**

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

**AUTHORITY**

7 USC § 2021 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 SUMMARY**

In a letter dated November 16, 2023, the Retailer Operations Division charged 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 2022 through May 2023. 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 Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the

conditions specified in 7 CFR § 278.6(i). The record indicates that Appellant did not respond to the charge letter.

After considering the evidence, the Retailer Operations Division issued a determination letter dated November 30, 2023. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By email dated December 12, 2023, Appellant appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, such as the denial of a firm's SNAP authorization, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This 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 contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 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 § 271.2 defines trafficking, in part, as:

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(a) states:

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(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).

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.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

### **SUMMARY OF THE CHARGES**

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from December 2022 through May 2023. This involved the following SNAP transaction patterns which are indicative of trafficking:

- In a series of EBT transactions, there were a large number of transactions ending in a same cents value.
- In a series of EBT transactions, there were a large number of transactions in repeated dollar values.
- In a series of EBT transactions, multiple transactions were made from the accounts of individual households within a set time period.
- In a series of EBT transactions, your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

## **ANALYSIS AND FINDINGS**

A review of the evidence does not support the determination to permanently disqualify Appellant from participating as an authorized retailer in the SNAP. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

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.

## **CONCLUSION**

Based on the discussion above, the determination by the Retailer Operations Division to permanently disqualify [REDACTED] from participating as an authorized retailer in SNAP is reversed.

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.

DAVID SHIVELY  
ADMINISTRATIVE REVIEW OFFICER

March 21, 2024