

United States
Department of
Agriculture



Food and
Nutrition
Service

Supplemental
Nutrition
Assistance
Program

Retailer Policy
Division

Administrative
and Judicial
Review Branch

1320 Braddock
Place, 5th Floor,
Alexandria, VA
22314

Fax:
(844) 387-1337

mya.dupree@u
sda.gov

March 13, 2024

Mansoor Ansari, JD, LLM
Ansari Tax Law Firm LLC
2650 Holcomb Bridge Road
Suite 110
Alpharetta, GA 30022

Re: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case Number C0265963

Dear Store Owner:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), in response to your August 31, 2023, request for administrative review. Included is also 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 against [REDACTED] from participating as an authorized retailer in the Supplemental Nutrition Assistance Program was properly imposed by the Retailer Operations Division. Therefore, the Retailer Operations Division's determination is reversed.

Sincerely,

A handwritten signature in cursive script that reads "Mya Dupree".

Mya Dupree
Administrative Review Officer

Enclosure

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

██████████
Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0265963

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 participation 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 in its administration of the SNAP, when it assessed a civil money penalty in lieu of 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 CHRONOLOGY

In a letter dated August 11, 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 July 2022 through December 2022. 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 Retailer Operations Division issued a determination letter dated August 20, 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 letter dated August 31, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an 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 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), (c) 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 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 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(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.

7 CFR § 278.6(b)(2) states, in part:

(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 a penalty. [Emphasis added.]

SUMMARY OF THE CHARGES

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

- Multiple transactions were made from the accounts of individual households withing a set time period.
- EBT transactions 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 the questionable transactions were the result of trafficking.

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.

MYA DUPREE
Administrative Review Officer

March 13, 2024