

MLK Supermarket, Inc. v. United States

United States District Court for the District of New Jersey
November 22, 2021, Decided; November 22, 2021, Filed
Civil Action No. 19-15566

Reporter

2021 U.S. Dist. LEXIS 227189 *; 2021 WL 5479571

Re: MLK Supermarket, Inc., et al. v. United States of America

Counsel: [*1] For MLK SUPERMARKET, INC, JOSE C. RODRIGUEZ, an Individual, WILSON SANTOS, an Individual, Plaintiffs: **GLENN R. REISER**, LEAD ATTORNEY, SHAPIRO CROLAND **REISER** APFEL & DI IORIO, HACKENSACK, NJ.

For UNITED STATES OF AMERICA, Defendant: BROOKS E. DOYNE, LEAD ATTORNEY, USAO, DISTRICT OF NEW JERSEY, NEWARK, NJ.

Judges: MADELINE COX ARLEO, UNITED STATES DISTRICT JUDGE.

Opinion by: MADELINE COX ARLEO

Opinion

LETTER ORDER

Dear Litigants:

Before the Court is Defendant United States of America's ("Defendant") Motion for Summary Judgment. ECF No. 36. Plaintiffs MLK Supermarket, Inc. ("MLK"), Jose C. Rodriguez ("Rodriguez"), and Wilson Santos ("Santos," or, together with MLK and Rodriguez, "Plaintiffs") oppose the motion. ECF No. 40. For the reasons explained below, Defendant's motion is **DENIED**.

I. BACKGROUND¹

This action arises out of an administrative decision by the United States Department of Agriculture, Food and Nutrition Services ("FNS") to permanently disqualify MLK from participating as an authorized retailer in the

¹ Unless otherwise noted, the following facts are drawn from Defendant's Statement of Material Facts Not in Dispute Pursuant to Local Civil Rule 56.1 ("Def. SMF"), ECF No. 36.3, Plaintiffs' Response to Defendants' Material Facts ("Pls. Resp. SMF"), ECF No. 40.2, Plaintiffs' Supplemental Statement of Disputed Facts ("Pls. SMF"), ECF No. 40.3, Defendant's Response to Plaintiffs' Supplemental Statement of Disputed Facts ("Def. Resp. SMF"), ECF No. 45.1, and the Administrative Record ("A.R."), ECF No. 37.

Supplemental Nutrition Assistance Program ("SNAP") after finding that it had trafficked in SNAP benefits. See generally Complaint ("Compl."), ECF No. 1.

Plaintiff MLK is a store located in Jersey City, New Jersey. [*2] Pls. Resp. SMF ¶ 1. It is owned by Plaintiffs Rodriguez and Santos. Id. ¶ 2. Defendant FNS administers SNAP, "a federal program that provides food-stamp allotments [in the form of Electronic Benefit Transfer ("EBT") cards] to supplement the budgets of eligible families." Id. ¶¶ 3-4; 7 C.F.R. § 271.2. MLK became an authorized SNAP retailer on June 29, 2017. Pls. Resp. SMF ¶ 5.

In 2018, the FNS Retailer Operations Division launched an investigation into MLK after the store "appeared on the EBT [Anti-Fraud Locator Using EBT Retailer Transactions] System [(the 'ALERT System')]" as having met patterns consistent with possible EBT trafficking violations."² A.R. 183. As part of the investigation, FNS analyzed MLK's SNAP transaction data for the months of December 2017 through June 2018. Id. In addition, an on-site reviewer visited MLK with Santos's consent on June 26, 2018. Id. at 163-68. Based on its analysis of the collected data, FNS found "suspicious patterns of transactions indicating the likelihood that SNAP benefits were being trafficked." Id. at 189. The transaction patterns fell into four categories: (1) an unusual number of transactions ending in a same cents value; (2) multiple purchase transactions [*3] were made too rapidly to be credible; (3) repetitive transactions in a set period of time by same household/account; and (4) excessively large purchase transactions were made from recipient accounts. Id. at 189-93; see also Pls. Resp. SMF ¶ 10. FNS concluded that the evidence warranted issuance of a trafficking charge letter. A.R. 210.

By letter dated August 7, 2018 (the "Charge Letter"), FNS informed Plaintiffs that it was "charging [MLK] with trafficking, as defined under Section 271.1 of the SNAP regulations." A.R. 226. The Charge Letter further stated that "[i]f it is determined that your firm committed the trafficking violations . . . it will be permanently disqualified from the Supplemental Nutrition Assistance Program as provided by SNAP regulations, [Section 278.6\(e\)\(1\)](#)." Id.; see also Pls. Resp. SMF ¶ 12. Alternatively, "[t]he SNAP regulations . . . provide that, under certain conditions, FNS may impose a civil money penalty . . . of up to \$59,000.00 in lieu of permanent disqualification of a firm for trafficking." A.R. 226. The Charge Letter notified Plaintiffs that they had the right to "present any information, explanation, or evidence" in response to the charges within ten days of receipt [*4] of the Charge Letter. Id. at 227.

On August 9, 2018, Plaintiffs informed FNS that MLK extends credit accounts to SNAP customers. Id. at 247. FNS responded by letter that same day (the "Credit Charge Letter") requesting supporting documentation and explaining that "[t]he acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f)" and results in a one-year disqualification from participation in SNAP. Id.; Pls. Resp. SMF ¶¶ 15-16.

By letter dated August 15, 2018, Santos and Rodriguez responded to the Charge Letter, asserting that "there was no misuse of SNAP benefits and that the MLK's customers have their routines for purchasing products, which is something out of their control." Pls. Resp. SMF ¶ 17; A.R. 270-71. Santos and Rodriguez sent a separate letter in response to the Credit Charge Letter, in which they conceded that MLK had granted credit to two customers. Pls. Resp. SMF ¶ 18; A.R. 272. They explained that they extended the credit to help a mother looking to feed her children, not for profit. Pls. Resp. SMF ¶ 19; A.R. 272.

After considering the available evidence and Plaintiffs' responses, FNS determined that the violations [*5] cited in the Charge Letter had occurred and permanently disqualified MLK from SNAP. Pls. Resp. SMF ¶ 25; A.R. 351-52. FNS informed Plaintiffs of its determination by letter dated August 28, 2018 (the "Determination Letter"). A.R. 351-52. In the Determination Letter, FNS explained that MLK was not eligible for a civil monetary penalty in lieu of disqualification because Plaintiffs had failed to submit sufficient evidence showing that MLK established and implemented an effective compliance program to prevent SNAP violations. Pls. Resp. SMF ¶ 26; A.R. 351.

²The SNAP regulations define "trafficking" as including "[t]he buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 C.F.R. § 271.2.

With the assistance of counsel, Plaintiffs requested administrative review of the trafficking determination. Pls. Resp. SMF ¶ 30. Thereafter, the Administrative Review Officer reviewed the information submitted by MLK and asked FNS to determine whether the information altered FNS's analysis. *Id.* ¶ 34. On June 12, 2019, the FNS Administrative Review Branch issued a Final Agency Decision ("FAD") finding it "more likely true than not true that program violations did . . . occur as charged." A.R. 766. The FAD sustained the decision to permanently disqualify MLK from participating in SNAP. Pls. Resp. SMF ¶ 35; A.R. 742.

Plaintiffs instituted [*6] this action on July 18, 2019, seeking judicial review of the Final Agency Decision. Compl. On April 26, 2021, Defendant moved for summary judgment, which Plaintiffs opposed. ECF Nos. 36, 40.

II. LEGAL STANDARD

A. Summary Judgment

Pursuant to [Federal Rule of Civil Procedure 56\(c\)](#), the Court will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with available affidavits, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. See [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); [Celotex Corp. v. Catrett](#), 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "[S]ummary judgment may be granted only if there exists no genuine issue of material fact that would permit a reasonable jury to find for the nonmoving party." [Miller v. Ind. Hosp.](#), 843 F.2d 139, 143 (3d Cir. 1988).

B. Judicial Review of FNS Final Determinations

An aggrieved party may seek judicial review of a final determination by FNS. [7 U.S.C. § 2023\(a\)\(13\)](#). The governing statute provides that "[t]he suit . . . shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue." [7 U.S.C. § 2023\(a\)\(15\)](#). Judicial review involves a two-part inquiry. First, the Court must determine whether a violation occurred. [White Horse No. 2 v. United States, No. 11-1538, 2012 U.S. Dist. LEXIS 59856, 2012 WL 1533468, at *2 \(D.N.J. Apr. 30, 2012\)](#). "For this inquiry, the plaintiff challenging the administrative [*7] action has the burden of proving by a preponderance of the evidence that the charged SNAP violation did not occur." *Id.* Second, the Court must consider whether the sanction FNS imposed was appropriate. [2012 U.S. Dist. LEXIS 59856, \[WL\] at *3](#). "The standard of review for the imposition of a sanction under SNAP is whether the Secretary's action was arbitrary or capricious, i.e., whether it was unwarranted in law or without justification in fact." *Id.* (internal citation and quotation marks omitted).

III. ANALYSIS

Plaintiffs argue that summary judgment is inappropriate for a variety of procedural and substantive reasons. The Court addresses each argument in turn.

A. Defendant's Compliance with SOP

Plaintiffs argue that the disqualification determination is invalid because Defendant failed to follow two of its Standard Operating Procedures ("SOP"). ECF No. 40 at 22-23. The Court finds that Plaintiffs have raised triable issues of fact regarding Defendant's compliance with its SOP.

Plaintiffs first assert that the administrative case should have been dismissed because Defendant misclassified MLK as a convenience store rather than as a small grocer. *Id.* at 22. As a result, Plaintiffs argue, FNS should have

closed the matter in accordance [*8] with SOP 4-1. Id. The parties agree that under SOP 4-1, "[a]n inaccurate store type . . . in an EBT analysis case . . . can result in . . . the store being measured against inappropriate comparisons" and "no further action (a dismissal) is warranted" against miscoded retailers. Def. Resp. SMF ¶ 44 (internal quotation marks omitted). While the record suggests that Defendant did compare MLK's transactions to both convenience stores and small grocers, A.R. 197, it is not clear from the parties' briefing whether dismissal can be avoided under SOP 4-1 by comparing an allegedly miscoded store to multiple store types. Thus, the misclassification issue will proceed to trial.

Plaintiffs next argue that Defendant violated SOP 4-1 because two categories of transactions detected by the ALERT System contained an inadequate number of scan hits to support a charge of trafficking. See ECF No. 40 at 23. SOP 4-1 provides, in relevant part, that "[t]he number of hits within a scan must be compared to the total number of transactions to determine if the pattern has any significance. . . . A pattern requires monthly repetition more than a single hit. Three sets per month over a review period is a likely [*9] pattern." ECF No. 40.1 at 180. The record indicates that the transactions occurring in short timeframes category contains no hits for the months of December 2017, January 2018, and February 2018, and less than three sets for April 2018 and June 2018. A.R. 232-33. The Court further observes that the repetitive transactions in a set time frame by the same household category contains no hits for February 2018 and less than three sets for December 2017. Id. at 234-38. At a minimum, there is a triable issue of fact as to whether these two transaction categories warranted any further investigation by FNS.

Finally, Plaintiffs maintain that Defendant violated SOP 4-3 because the Case Analysis Document fails to address MLK's past compliance history. ECF No. 40 at 23. SOP 4-3 provides, in relevant part, that the CAD "shall include . . . [s]tore profile to include past compliance history." ECF No. 40.1 at 153. Here, Defendant does not dispute that it did not document the store's compliance history. Rather, it argues, without citation, that "[t]here is no evidence that Defendant failed to consider the past compliance history of their investigation and review of materials." Def. Resp. SMF ¶ 48. [*10] Defendant's conclusory argument is insufficient to establish that FNS considered Plaintiffs' past compliance history in accordance with SOP 4-3. Therefore, this issue will proceed to trial, as well.³

B. Store Comparators

The Court further finds that Plaintiffs have raised a genuine issue of material fact as to whether Defendant relied on improper store comparators in its analysis of the EBT transaction data. See ECF No. 40 at 26-29.

Plaintiffs contend that Defendant used four comparators that were located too far away from, and did not offer comparable services to, MLK. SOP 4-1 provides that "[s]tores should be compared to retailers with comparable to superior inventory with emphasis on proximity to the subject store." ECF No. 40.1 at 183. SOP 4-3 states that "[t]he case worker should be attuned to information in the store record relating to . . . unique characteristics or business practices (e.g., 24 hour operations, home delivery, sales to meal services etc.)." Id. at 154. Here, Plaintiffs correctly note that the selected comparators—three convenience stores and one small grocer—were between .47 miles and .81 miles away from MLK, despite there being closer convenience stores and small [*11] grocers to MLK. A.R. 194-97. Moreover, unlike MLK, none of the four comparators offered home delivery and two did not accept telephone orders. Def. Resp. SMF ¶ 46. Given the SOP guidance emphasizing store proximity and unique business practices, the Court finds that Plaintiffs have adduced sufficient evidence to raise a triable issue of fact as to whether Defendant relied on improper store comparators.

³ Plaintiffs also contend that Defendant violated SOP 4-3 by improperly using a seven-month, rather than a three-to-six-month, review period. ECF No. 40 at 22-23. This argument is unpersuasive. Contrary to Plaintiffs' assertion, SOP 4-3 only mandates that the review "should include a minimum of three months of data" and notes that "[t]hree to six months of data is acceptable." ECF No. 40.1 at 151. It does not set a maximum review period.

C. Administrative Level Burden of Proof

Plaintiffs next contend that the disqualification determination is invalid because Defendant improperly shifted the burden of proof at the initial administrative level to Plaintiffs. See ECF No. 40 at 20-21. This argument is unpersuasive. While Plaintiffs rely on testimony from FNS Program Specialist Luz Peña and FNS Section Chief Marchee M. Briant to argue that Defendant "held the burden at the administrative level to be upon the Plaintiffs rather than FNS," a holistic review of the testimony does not support Plaintiffs' position. Id. at 21. Indeed, Peña testified that it was her understanding that she "build[s] a case" and "present[s] it to [the] section chief as a form of saying that we do believe there is a case there." Deposition of Luz Peña [*12] ("Peña Dep.") Tr. at 26:12-20, ECF No. 40.1 at Ex. A. She further explained that FNS mails a charge letter "once we show evidence to support" sending one. Peña Dep. Tr. at 26:18-20. Similarly, Briant only testified that "it is the retailer's responsibility to provide us an explanation to support the level of transactions as legitimate;" she did not directly respond to counsel's inquiry as to which party bears the burden of proof. Deposition of Marchee Briant ("Briant Dep.") Tr. at 83:25-84:12, ECF No. 40.1 at Ex. B. In any event, it is clear from the Administrative Record as a whole that Defendant did in fact base the Charge Letter on its own evaluation of the data it compiled. See CAD, A.R. 181-210. Contrary to Plaintiffs' assertions, the fact that FNS considered whether Plaintiffs had a legitimate explanation for the suspicious transactions does not amount to improper burden shifting.

D. Trafficking Violations

Finally, the Court turns to the merits of the trafficking charges. As discussed above, the Court acknowledges that Plaintiffs object to the transactions occurring in short timeframes and repetitive transactions categories as being based on inadequate scan hits. Thus, the Court [*13] will focus the following analysis on the remaining two categories: same cents value transactions and excessively large purchase transactions.⁴

1. Same Cents Value Transactions

For the first category, FNS found that of the 7,692 EBT transactions MLK conducted during the review period, 2,497 were in the amount of \$9.00 or more, and 128 were in the amount of \$30.00 or more, "or 5% of these transactions ended in the same cents." A.R. 189.

In their opposition, Plaintiffs flatly deny trafficking in SNAP benefits. See ECF No. 40 at 24-26. To support their position, they rely primarily on an affidavit from Santos that offers several possible explanations for the same cents value transactions. According to Santos, MLK "rounds some transactions based upon a number of factors," such as "where customers are in a hurry, where there's a line of customers, where the customer places an order for delivery or a telephone order, and where the customer pays an outstanding credit happen from time to time." Plaintiff Santos' Affidavit in Support of Opposition to Defendant's Motion for Summary Judgment ("Santos Aff.") ¶ 6(a)(i), ECF No. 40.1, Ex. E. Other times, "customers will order a certain dollar-figure [*14] of deli items, so transactions will end in a particular cent range such as .00 or .50." or "ask to pay only a portion of their purchases with EBT, and then pay the balance with their credit/debit card, or with cash." Id. ¶ 6(a)(ii)-(iii). Plaintiffs argue that these practices are "relatively common place as even some of the comparison stores show similar habits." ECF No. 40 at 30. Specifically, they point to a comparator convenience store that had 943 same cents value transactions during the same period but were not considered suspicious. Id.; A.R. 200.

Santos's affidavit, coupled with the transaction reports in the record, is sufficient to raise a genuine issue of material fact as to the legitimacy of the same cents value transactions. As FNS itself concedes, it is "possible that normal

⁴The Court will defer ruling on any remaining procedural and evidentiary objections until the parties have had an opportunity to file pre-trial motions in limine.

customer shopping habits created the transactions." ECF No. 36.2 at 27. Here, Plaintiffs have offered plausible explanations for the transactions detected by the ALERT System. These explanations are supported by other documentary evidence in the record, including evidence that a comparator store recorded similar same cents value transactions. Accordingly, the Court finds that there are genuine issues [*15] of material fact that preclude summary judgment.

2. Excessively Large Purchase Transactions

The Court also concludes that Plaintiffs have raised a triable issue of fact as to the excessively large purchases category. The record indicates that during the review period, MLK's average total purchase transaction amount was \$10.02, while the average convenience store transaction in New Jersey was only \$8.84. A.R. 202. Of the 7,692 transactions MLK conducted during the review period, 381 transactions were more than \$34.00. Id. at 193. FNS does not note, however, what the average transaction amount was for small grocers during the same period. See ECF No. 36.2 at 25. Furthermore, Plaintiffs offer plausible reasons for the transaction amounts. According to Santos, most of the larger transactions are due to MLK's varied inventory, competitive prices, and "telephone orders and deliveries[, which] encourage our customers to make larger purchases," Santos Aff. ¶ 6(d)(iii)-(vi). To support their explanations, Plaintiffs cite to the deposition testimony of FNS Program Specialist Peña. Peña conceded that MLK appeared to have "enough stock" and could satisfy a household's needs in staple food categories. [*16] Peña Dep. Tr. at 43:11-44:3, ECF No. 40.1 at Ex. A. She further testified that she did not know whether MLK's inventory was common in the average convenience store in New Jersey. See Peña Dep. Tr. at 45:2-14. On this record, the Court finds that Plaintiffs have raised a genuine dispute of material fact as to the legitimacy of the transactions.⁵

Because Plaintiffs have adduced sufficient evidence to raise triable issues of fact as to the merits of the trafficking charges, the Court must deny Defendant's motion.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion for Summary Judgment, ECF No. 36, is **DENIED**.

SO ORDERED.

/s/ Madeline Cox Arleo

MADELINE COX ARLEO

United States District Judge

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⁵ Because Plaintiffs have raised triable issues of fact as to the merits of the trafficking charges, the Court need not reach the question of whether FNS's decision to permanently disqualify MLK was arbitrary or capricious.