

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

Del Pueblo Market,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0218094

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Del Pueblo Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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

By letter dated June 28, 2019, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in November 2018 through April 2019. 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 the 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).

Appellant, through counsel, submitted a Freedom of Information Act (FOIA) request dated July 9, 2019. This request did not include a request for a CMP or any evidence in support of one. The agency responded to the FOIA request by correspondence sent on August 7, 2019. On November 5, 2019, Appellant, through counsel, appealed the FOIA response and the Office of Retailer Operations and Compliance suspended all work on this case pending the outcome of the appeal. The FOIA appeal decision was subsequently issued on March 22, 2021. The Office of Retailer Operations and Compliance sent a 10 day reminder of the opportunity to submit an additional response to the charges to counsel in a letter dated March 25, 2021.

Appellant, through counsel, responded to the charges in a letter dated April 5, 2021, that did request, but did not provide any supporting documentation for a CMP. The Office of Retailer Operations and Compliance notified Appellant by letter dated May 27, 2021, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated June 4, 2021, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. Subsequent correspondence consisting of a brief dated July 19, 2021, and several exhibits was submitted by counsel via email.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) 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 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."

7 CFR § 278.6(e)(1)(i) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined in part as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. Trafficking includes “Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food”.

7 CFR §278.6(i) states: “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)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

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. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of November 2018 through April 2019. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
3. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- Store ownership vehemently denies that any violations occurred. The store has never had a SNAP compliance problem in the past;
- The 1,500 SF store has 800 SF of storage and sells a variety and quantity of staple food items to the surrounding community such as fruits, vegetables, baby food, bread, lunch meat, canned meats, cereal, pasta, soup, beans, milk, eggs, chips, cookies, chips [sic], and additional food items. Inventory is replenished on a rolling basis and depending upon

demand. The store is located in an economically depressed area surrounded by poverty and many low-income families with no immediate competitors around it. The Appellant firm serves the surrounding community, which in pertinent part suffers from poverty at a rate of 16.6%. A substantial number of the firm's clients come from the surrounding neighborhoods. Appellant cited demographic data for area residents including statistics on households with children or older members as well as the median income of SNAP households;

- It is likely that the presence of a Confirmation Bias exists, a tendency to interpret information in a way that supports one's preconceptions leading to statistical errors. It is a type of cognitive bias and represents an error of inductive inference toward confirmation of the hypothesis under study." (Definition derived from Science Daily). In this instance, ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the Department's hypothesis that trafficking is occurring at the store. A valid statistical analysis should consider all relevant factors and not favor any particular hypothesis when evaluating the owner's reply. When relevant factors are disregarded or devalued (like prior negative RIB investigations conducted at the store and the other information submitted by the Appellants during the initial administrative proceedings), the statistical analysis becomes inherently flawed;
- The pertinent burden of proof at this stage of SNAP retailer disqualification process is the "preponderance of the evidence" standard, which means that the evidence must be adequate enough 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. See *L&M Grocery Market, Inc. vs. Retailer Operations and Compliance, Case No.: C0221616*. The Department bears the burden of proof, not the retailer at this stage of the proceedings. Appellant referenced another administrative review case regarding the burden of proof;
- Appellant referenced two other non-Departmental studies. One addressed obesity in SNAP households while the other addressed food deserts and diet issues;
- Appellant cited a FNS 2011 study on SNAP benefit redemption patterns showing that a large portion of households redeemed nearly all their benefits in the first two weeks of the month. It also provided statistics from a 2016 study by Convenience Store News on customer shopping patterns that shows small grocery and convenience store customers are among the most loyal when it comes to store selection with 70.5 percent of daily and 62.8 percent of weekly shoppers stating they shop at the same store every time. This study also states that SNAP participants shopping daily or weekly are significantly more likely to do so in the morning (6 AM-8:59 AM) on the way to work or school or during the late evening (7 PM-10 PM) while running errands. Low income SNAP households are also more likely to shop at small grocery/ convenience stores than non-participants. In 2016, the FMI annual report on grocery shopping trends shows that consumer shopping habits trended toward an increase in the use of convenience stores, small grocery stores, and ethnic food stores;
- Appellant also referenced the FNS 2020 study on SNAP benefit redemption patterns in FY 2017, specifically citing findings such as households with larger monthly benefits shop more frequently and have larger average transaction amounts, that the numbers made per month have a wide diversity with 9.5 percent of households averaging more than 20 transactions per month, the numbers of stores visited varied widely, and that

although 57 percent of all transactions occurred at super stores/supermarkets, convenience stores were next at 21.2 percent. Transaction averages were highest at super stores/supermarkets followed by specialty stores and there was a significant jump in average amounts at convenience stores (\$7.17, and at small grocery stores (\$13.19). Appellant also noted that African American/Native American households conducted 27.8 percent more transactions at convenience stores than the average SNAP household and that African American/Hispanic households conducted twice as many transactions at small grocery stores than the average SNAP household;

- The April 3, 2019, FNS store visit shows the store to be sufficiently stocked, but failed to list some of the store's most expensive food items such as corn oil \$19.99, cases of Guatamala soda \$35.00, five pound cheese packages \$15.99, and Enfamil \$18.99;
- According to the USDA's data, there is a material difference in enforcement (compliance actions) amongst the different demographics of SNAP participants. These compliance actions are presumably related at least in part to retailer disqualifications as a number of IAB Section Chiefs and Program Specialists have testified in depositions that households involved in Data-Driven/EBT Analysis Cases are reported after a finding of trafficking has been made. Of significant note, single-adult SNAP households with children have a much higher disqualification rate (1.6%) than multiple-adult SNAP households with children (1.1%). This is likely because their shopping patterns (which rely more significantly on small stores like the owner's and much less on larger stores) trigger a disproportionate rate of SNAP disqualifications at retailers. This analysis is supported by the fact that the highest disqualification rates in the nation are for African American households (2.6%) and Hispanic households (1.9%) – both ethnicities that show up at a disproportionate rate in EBT Analysis Cases because of their shopping preferences for smaller stores, as illustrated by the USDA's 2017 Report above. Furthermore, Hispanic's higher transaction size averages increase the likelihood that their transactions are flagged by ALERT scans because they are more likely to conduct them at smaller stores. All of the data, with the exception of the Native American disqualification rate (which is very low, likely due to a lower sample size of both SNAP households and retailers), point to a bias in disqualifications slanted towards smaller grocers. This difference in disqualification rates is likely due to a confirmation bias within the retailer disqualifications. Where certain households are more likely to shop at smaller stores – and in greater frequency or transaction amounts – they are more likely to be disqualified;
- Appellant states that it is FNS's contention that the transaction characteristics are indicative of trafficking, and while that may be true in limited circumstances, the presence of a specific behavior in the microcosm may not be statistically indicative or relevant in the macrocosm. What matters is the frequency with which those transaction characteristics correlate to trafficking in the broader data set. This is called a correlation coefficient. A correlation coefficient is a measurement of how strong a relationship is between two variables. The stronger the relationship between the variables, the higher the correlation coefficient. Appellant stated that it is beyond dispute that FNS doesn't know what the correlation coefficient is between any of the ALERT Scans and trafficking in SNAP benefits. Appellant used 2010-2017 data from RIB investigations consisting of 2,800 trafficking cases out of 35,032 investigations to determine a correlation coefficient of 0.2646 showing a weak correlation between variables. Appellant further referenced an administrative review case that cited other elements that are analyzed in addition to the

ALERT scans to determine whether the questionable transactions were, more likely than not, the result of trafficking. Appellant contends that the scan categories are the keystone to a trafficking case even though they are not reliable enough to warrant serious evidentiary consideration;

- The ALERT Scan categories are not inherently indicative of trafficking. The link between these scans categories and “trafficking” is a policy determination, not an evidentiary and factual determination. According to FNS’s testimony over the last half-decade, in which this Section has participated, the Scans transactions are not, themselves, trafficking. Instead, testimony has regularly indicated that it is the additional analysis of households, comparison stores and inventory which drives the determination that the scans correlate to trafficking in any given case;
- Appellant asserts that recent administrative review cases discuss the precedent that should be considered in this case including *Howard’s Quik Mart vs. Retailer Operations Division and Gloesis Group vs. Retailer Operations Division*. Appellant quoted from *Howard’s Quick Mart* regarding trafficking being the “only plausible explanation” and contends that cases should be evaluated under the same standard;
- Attachment 1 sets forth 30 transaction sets. All of these transactions are the result of the store’s business practices, co-shopping, and/or the habits of the SNAP clientele. Appellant cites *Onukwugha v. U.S.* which he states says that “multiple transactions occurring over the span of hours” are not “inherently suspicious,” as it is not uncommon for a customer to make multiple trips to the same store on the same day. Appellant referenced prior Final Agency Decisions with acceptable explanations for Scan B2. In order for a USDA decision to not be considered arbitrary, it would need to follow the established case law and precedent. These cases and explanations include: a significant low-income population near the retailer, the absence of local SNAP retailers, a significant inventory, customer loyalty/loyalty programs, lack of transportation, delivery services, bulk discounts on food purchases (especially expensive items and sodas), and forgotten items. The shortest time frame between transactions in Scan B2 being seven minutes and 51seconds is more than enough time to conduct the transactions listed. Furthermore, the surrounding SNAP retailers operate in slightly different business environment conditions, or with material differences in operation, location, and inventory. There are 43, with the nearest store located 0.05 miles away and the nearest supermarket being Walmart is located 1.31 miles away. Furthermore, many of these other stores are stacked one upon another. This causes a reduction in the flow of SNAP participants to each of them as they have more direct competition and a smaller portion of the overall SNAP business;
- The Department has previously conducted research into the standard practices of participants for food purchases, and purchases made within the first seven days after receiving benefits is not unusual. In fact, on a regular basis, the participants will make significant grocery purchases from the store within 48 hours of receiving their benefit deposit. Such patterns are supported by the Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report (2011), which found “[i]n an average month during fiscal year 2009, a SNAP household spends more than half of its benefit in the first week, and more than three-quarters by the second week.” Furthermore, it found that 21.4% of the benefits were immediately pulled out within the first twenty-four (24) hours of receiving them, then another 37% were taken out in the days following thereafter, up to seven days after issuance thereof. Accordingly, it is not

unexpected that the SNAP participants are going to spend their money quickly in this timeframe. Here, almost all of the transactions set forth in Attachment 1 reflect this standard shopping habits and patterns of SNAP participants. Households may also participate in co-shopping where different adult household members share shopping responsibilities which could result in separate transactions in a short period of time;

- From a logistics standpoint, the store does not have an optical scanner, but the clerk can visually identify and enter items into the register. Item prices are usually consistent and are frequently memorized by the clerk through sheer repetition over time. The store will also tabulate transactions on a rolling basis, meaning that unlike a grocery store where you purchase items all at once, this store permits participants to gather items, bring them to register, and then return to gather more items. What this means is that although the EBT transactions are processed consecutively over a matter of a few minutes, the calculations, bagging and gathering of items can take dozens of minutes if the participant so chooses. From a physical transportation angle, the groceries are bagged, and often the customers carry the groceries by hand (using their children or friends to carry some items). On occasion, other items (like strollers) can be used to help transport the items out of the store. From a causality standpoint, it's important to consider the store's size, inventory and operations. The store's inventory is sufficient to account for the transactions and greatly exceeds those around it with a greater quality and variety than your average c-store. The store's convenience is an important factor to consider when evaluating shopping behavior. It is much easier for the customer to get through the spaces of a store like the Appellant's than it is for them to go into a supermarket/superstore. Accordingly, these customers are more likely to come back for supplemental and quick shopping trips than they otherwise would at an average convenience store with an inferior inventory and at a further distance from their homes. SNAP participants frequently don't have their own vehicles so trips to larger stores are often dependent upon rides from friends or family. While shopping trips to other stores like do happen, a household that cannot depend on those trips is forced to shop nearby. Otherwise they would have to travel on foot, with children in tow, during all seasons of the year, to gather food, and carry it all the way back to their home. This issue is related to convenience, as it is much easier to carry frozen groceries a few blocks home than it is to walk a mile round trip with the same groceries. Finally, the inventory offered by the store is of such a variety that it's reasonable to assume a household could satisfy all of their needs on a single shopping trip purchasing enough types of food for them to be able to make meals for their families. As such, in light of the reasonable explanations set forth by the Appellant, it is unlikely that the suspicious transaction pattern was the result of trafficking and count two of the charge letter should be withdrawn;
- The owner has no control over the transactions that meet Scan C requirements and are frequently related to those business practices and SNAP consumer shopping habits that give rise to the Scan F transactions. Appellant referenced prior Final Agency Decisions with acceptable explanations for Scan C that include: bulk sale discounts, cultural shopping habits, rewards systems, specialized language, specialty/ethnic foods, large households shopping together, multiple households shopping together and sharing benefits, expensive inventory, transactions within the USDA weekly average household food amount, and similar credit/debit transactions. [NOTE: while Appellant claims many decisions, it only cites those purportedly related to a single case.] Customers

exhaust their benefits at stores like Appellants because of the convenience. The store's inventory records line up with its gross food sales revenue, and exceeds the total SNAP sales for the review period so inventory sufficiency is not a question. With respect to inventory quantity, it is not the Appellants' position that the customers are stacking \$350.00 worth of canned foods on the counter and buying them. Instead, these purchases involve high priced items (which include Enfamil, Rice, Cheese, Soda), the involvement of which nearly always results in high dollar transactions that have a likelihood of depleting SNAP benefits. Furthermore, given the infrequency of these transactions, it is not as though the Store's explanation is that every customer is making these purchases. However, these transactions do sometimes happen. The store has many high priced items that include common staple items that SNAP participants routinely purchase like rice, oils, dairy, and sodas and include: corn oil \$19.99, cases of Guatamala soda \$35.00, five pound cheese packages \$15.99, and Enfamil \$18.99, Filipo Berio olive oil \$24.99, Maseca corn meal \$30.00/\$25.99, and Dona Lisa Rice \$25.49. If the store were trafficking, there would be a gross discrepancy between the food purchased and the sales of the store, with more sales than the inventory could account for. However, in this case there is more than enough inventory and the gross revenue numbers are right in line with the inventory. Accordingly, the Department's selection of these less-than-five-percent transactions is not indicative of trafficking. In summary, the Attachment 2 transactions are not trafficking and are supported by the substantial inventory of the store and are reasonably explained by the location of the store, co-shopping, reliance on the store as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole. That the Department segregated these transactions from the remainder is of little consequence as most other grocers in the store's specific geographical area are likely to have the same number (or greater) of similar transactions and count two of the charge letter should be withdrawn;

- The 93 excessively large transactions in Attachment 3 range from \$51.49 to \$362.78. It is not for the SNAP retailer to question why SNAP households spend their money the way that they do. It is the SNAP retailer's job to make certain that the purchases are made for eligible items, and to treat the SNAP participants the way that they would treat anyone else. Appellant referenced prior Final Agency Decisions with acceptable explanations for Scan F. Where a store can demonstrate the presence of one or more of these factors, this Section should take no further action against the retailer as other legitimate explanations exist for the presence of the Scan F transactions. Appellant cited acceptable information that would explain these transactions with cases that purportedly support them, such as: sufficient inventory based on invoices provided, sales tax documentation, large families shopping contemporaneously, high dollar eligible food in inventory, specialty or imported foods that are not available elsewhere, miscategorization of the store, large quantities of soda, absence of large SNAP retailers, large SNAP population, and bulk or reward system for larger purchases. Appellant claims that the presence of one or more of these constitutes a legitimate explanation for the Scan F transactions;
- The Department's research shows sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, as are meats, so it is therefore reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at the store. Households also likely have a larger amount of residents residing therein, thus

requiring a larger quantity of groceries than those households with less participants. Logistically, we look at two primary issues: does the store have adequate inventory to support the transactions; and does the store have the physical ability to conduct the transactions set out in the charge letter? Given the higher priced items in the store, it's not difficult to imagine \$75.00 worth of groceries being purchased in a single trip. Given that a number of the items are roughly \$10.00 each, six of such items wouldn't be difficult to carry and could be placed on the given space set out in the photographs from the store visit report. The cause of these transactions is tied directly to the store's inventory and convenience. Because they're so much closer to the SNAP participants (who don't have regular access to transportation – otherwise they wouldn't qualify to be SNAP participants), and their inventory contains such a wide variety of items, these transactions are more likely to occur as a matter of course. Furthermore, the only other stores that are nearby, don't have the inventory variety that this store has. Accordingly, this store is going to have larger transactions than the average convenience store. In summary, the transactions included in the Scan F attachment to the Charge Letter are not trafficking. They are supported by the substantial inventory of the store and are reasonably explained by co-shopping, the store's pricing structure, reliance on the store as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole. That the Department segregated these transactions from the remainder is of little consequence as most other grocers in the store's specific geographical area are likely to have the same number (or greater) of similar transactions. Therefore count three of the charge letter should be withdrawn; and,

- In the event the Department determines that trafficking did occur, a trafficking CMP is requested in lieu of a permanent disqualification. In conclusion, the Department's scan categories are not sufficient to meet the criteria necessary for a prima facie case of trafficking. Even if they were, the explanation of trafficking is neither the only supported explanation, nor the most likely. The charges come without credible information upon which the Department could possibly rely. The transaction categories set forth in the charge letter have been explained by the Appellants: they are the result of the Appellant's pricing structure, inventory contents, hours of operations, the credit system [sic], co-shopping, and/or a reflection on the normal shopping patterns of the store's clientele. Thus, the transaction patterns identified have been explained by the Appellants as required in *Skyson* and, as such, the Department's finding that trafficking had more likely than not occurred at the Store is erroneous. The Appellant has clearly met the "preponderance of the evidence" standard, and demonstrated that there are other more plausible explanations for the transactions contained within the charge letter Attachments than trafficking. Furthermore, the store has a policy of not offering cash back so the alleged trafficking did not occur. Therefore, the Appellant requests that the SNAP disqualification be reversed.

Appellant submitted bank statements for November 2018, December 2018, and June 2019; a three-page excerpt from the Social Science Statist on using the Pearson Correlation Coefficient Calculator to produce an ALERT Correlation Coefficient Calculation; the FNS September 2020 Report on Benefit Redemption Patterns in SNAP in FY 2017; the FNS November 2016 report of Foods Typically Purchased by SNAP Households; a 2017 Elsevier Preventive Medicine Report on Shopping pattern and food purchase differences among SNAP and non-SNAP households in

the United States; and a 2014 Elsevier Social Science & Medicine Report on What does SNAP benefit usage tell us about food access in low-income neighborhoods? in support of these contentions.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of evidence for the legitimacy of such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS initially authorized the firm on December 7, 2016. The record indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during an April 3, 2019, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a minimally sized small grocery store of approximately 1,500 SF offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services. The store stocked many Hispanic brands (primarily Goya) as well as traditional American products.
- The store visit report and photos showed no shopping carts and only 10 small hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase beyond cases of Maseca corn flour and cases of canned fruit nectar drinks.
- The store visit report specifically noted that the firm was not a specialty food store and that there were no meat bundles, fish specials, or fruit/vegetable boxes for sale.
- The checkout area was approximately 1.5 feet wide and 1.5 feet deep with food displays and a PIN pad taking up nearly all of the area and leaving an extremely limited area for

customers to place their purchases. The extremely small checkout area would make it problematic to process large orders. The checkout area had one cash register, a POS device, and no optical scanner as confirmed by the store clerk.

- The firm had no kitchen or food prep area, but there were hot empanadas for sale behind the checkout counter for \$1.00 each and there was a microwave oven for customer use.
- The firm had a very limited stock of relatively inexpensive staple foods that also included single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, baked goods, spices, other drinks, and ineligible items.
- The firm had no fresh unprocessed meat other than several packages of pork chops in the deli case, no frozen unprocessed meat, no fresh unprocessed seafood other than three packages of shrimp in the deli case, no frozen unprocessed seafood, a limited quantity of canned and dried seafood, a very limited quantity and variety of processed meats and seafood (several packages of chicken hot dogs, three packages of lunch meats, several salamis, canned meat, and many canned fish), no jerky, no deli meats, no bacon, no canned poultry, no brown and serve sausages, no frozen entrees, no frozen dinners, eggs, a very limited quantity and variety of fresh fruit and vegetables, a large quantity and variety of frozen fruit and vegetables, dried beans, some dried fruit and vegetables, packaged nuts, single serving packaged nuts, 100 percent fruit juices, no 100 percent vegetable juices, some canned soups, a minimal stock of canned and packaged staple food items, packages and containers of cheese, no deli cheeses, cream cheese, no large yogurt, several single serving yogurt, no single serving yogurt drinks, margarine, butter, no sour cream, several gallons and half gallons of fresh milk, several single serving containers of fresh milk, several single serving milk drinks, canned milk, many coconut milk, no soy milk, no Lactaid milk, no powdered milk, no half & half, bread, rolls, croissants, tortillas, no taco shells, tostadas, no pitas, corn meal, AP flour, corn flour, sugar, rice, 10 boxes of cold cereal, no single serving cold cereal, hot cereal, many single serving noodle soups, no canned pasta, no single serving pasta, no dry pasta, no dry noodles, no pancake mix, no mac&cheese, single serving size mac&cheese, baking mixes, several frozen heat & eat convenience foods (taquitos and chimichangas), no other frozen convenience foods (pizza, pizza rolls, burgers, chicken sandwiches, BBQ sandwiches, tacos, burritos, pot pies, Hot Pockets, gyros, French fries, waffles, pancakes, garlic bread, lasagna, etc.), cooking oil, two olive oil, coffee, no tea, cocoa, baby foods, two baby cereal, infant formula, no baby juices, and very few expensive staple food items.
- Ineligible items included: tobacco, lottery, alcohol, ATM, hot foods, household products, paper products, health and beauty items, money transfers, Western Union, toys, small kitchen appliances, hats, diapers, and phone cards while accessory foods included: un/carbonated drinks, candy, condiments, spices, snacks, baked goods, cooking oil, olive oil, baking mixes, sugar, ice cream, single serving ice cream, coffee, and cocoa.
- The firm's hours of operation were open 8 AM-11 PM daily.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Many food items were individually priced. The FNS store visit report, completed in conjunction with the store clerk, and the many store visit photos shows that most food prices end in .x9 cents. A price ending in .x9 cents is a common pricing structure for stores of this type. The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being: more than ten cases (each with ten

4.4 pound bags) of Maseca corn meal flour priced at \$30.99, one case (ten 2.2 pound bags) of Maseca corn meal flour priced at \$25.99, two 20 pound bags of Dona Lisa Jasmine rice priced at \$25.49, and one 101.4 ounce container of Filipo Berio olive oil priced at \$24.99. This listing of the most expensive items was provided by the store clerk during the store visit.

- The firm was not a WIC vendor. While the firm did stock a limited selection of infant formula and baby food, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products at a WIC vendor using WIC vouchers, not SNAP EBT at the Appellant firm.
- The store visit report and photos showed many dusty cans/packages, expired/outdated foods, faded labels, and ice crystals on frozen foods all of which are indicators of a low turnover of product.

Multiple transactions in unusually short time frames

This Attachment documents 30 individual transactions in 14 sets of two or more transactions conducted by nine different households in a short period of time. Individual transaction amounts range from \$20.00 to \$220.00 with 21 transactions exceeding \$50.00 and nine transactions for \$100.00 or more. There were 20 transactions ending in .00 cents representing more than 66.0 percent or two-thirds of the 30 individual transactions. The Attachment also includes an unusually high number of individual transactions for the same amount such as two transactions for \$200.00, two for \$85.00, two for \$51.49, and two for \$40.00 to cite the higher dollar transactions that are not supported by store inventory or pricing. The high percentage of same cents transactions combined with the large number of same cents high dollar transactions is irregular and suspicious for this type of store.

There are transaction set totals as high as \$324.28, \$260.00, \$230.84, \$220.00, \$170.00, \$169.86, \$154.24, \$153.26, \$149.00, \$140.00, \$118.48, \$112.75, and \$102.98 to list the larger transaction sets. The dollar amounts of subsequent transactions in each set are substantial and equal or exceed \$20.00 in each of the 14 sets. The span of time for transaction sets ranges from seven minutes and 51 seconds to more than 30 hours with 10 of the 14 sets occurring over multiple days. Only two of the transaction sets occur in less than nine minutes (7:51 and 8:49) while the remaining 12 sets occur in more than three hours and 30 minutes. Two sets are comprised of three individual transactions while the remaining 12 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant's contentions regarding this charge have been previously cited and are addressed below.

Appellant offered no explanations for these repeating dollar values that withstand scrutiny. Appellant's claim that SNAP households prefer convenience over savings and do not know their SNAP balance are assumptions, not facts, as no basis has been offered to substantiate these

statements. The account balance for SNAP recipients is printed on the bottom of each POS receipt where SNAP was used as a payment. The balance is also available through a toll free number and stores may also quickly check a customer's balance through the store's POS terminal without the need to make a purchase. Appellant claims that a customer who does not know their balance will purchase a cheap item to see the balance on the receipt; however, in this Attachment, the cheapest transaction is \$20.00, an amount that is not cheap by any reasonable definition. Even if these explanations were accurate, they do not explain why households who are regularly shopping at much larger stores (super stores or supermarkets) would spend comparable or sometimes much greater amounts at the Appellant firm on the same day or within 24-72 hours.

No evidence has been offered to support the existence of credit accounts at the Appellant firm as explained in greater detail later in this decision.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item after checking-out or of multiple members of the same household shopping together and making separate purchases using the same EBT card in quick succession as 12 of the 14 transaction sets occur in three hours and 37 minutes or more time. Contrary to Appellant, it makes no sense that a household would conduct as many as three separate transactions over a short period of time that total to a substantial part of the household's monthly SNAP issuance when that household is also shopping at many larger stores. The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.00 with two of the 14 sets having subsequent transactions of \$100.00 or more, far more than the cost of a forgotten item or two. Appellant's contentions also provide no explanation as to why households would conduct two or three large dollar transactions at a firm with very limited stock within a matter of hours. It is noted that the September 2020 FNS report on *Benefit Redemption Patterns in SNAP in FY 2017* states that while households on average did spend 77.6 percent of their benefits by mid-month with over half being expended in the first week after issuance, that 82.1 percent of all benefits were spent at a super store or supermarket. Only 0.7 percent of households shopped exclusively at grocery stores while only 4.6 percent did not shop at a super store or supermarket. On average, households conducted 9.4 transactions per month that averaged \$27.36. Small grocery store purchases accounted for 2.6 percent of all transactions, but the average purchase amount was only \$13.19. Accordingly, the transaction patterns contained in the charge letter Attachments are not typical, but are unusual and indicative of trafficking.

Appellant, through counsel, inaccurately cites *Onukwugha v. U.S.* claiming it says that "multiple transactions occurring over the span of hours" are not "inherently suspicious," as it is not uncommon for a customer to make multiple trips to the same store on the same day. While court precedent is beyond the scope of this determination, FNS notes here that the Appellant is

distorting the court's findings. The court stated the following conclusion regarding the Scan B2 transactions:

“Transactions occurring in relatively quick succession, especially transactions that are large and for identical amounts, are extremely suspicious. *Onukwugha* has not offered any explanation for these transactions and neither have his customers who were involved in certain of these suspicious transactions, (see Ex. 101 at 42-43; Ex. 102 at 26-27; Ex. 102 at 15-16). In the absence of an innocent explanation, the court must conclude that *Onukwugha* has failed in his burden to prove that these transactions were not the result of trafficking.”

Regarding co-shopping, Appellant's claim is based on a survey that involved interviews with 10 consumers from five two-shopper households in Seattle in 2016. However, a review of the survey report finds no mention of SNAP households being interviewed. This reviewer is also not aware of any co-shopping studies that specifically address SNAP households therefore Appellant's contentions regarding co-shopping are assumptions as opposed to facts and are without any evidentiary value. Additionally, Appellant references a finding from a USDA report on foods typically purchased by SNAP households which states that, “Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional consumers”. This shows that SNAP households are not comparable to non-SNAP households in all areas which would likely include co-shopping. Also, unlike non-SNAP households, under SNAP regulations there can be multiple benefit households under the same roof each with its own EBT card and SNAP benefits. This provides additional SNAP benefits in a separate EBT account for individuals such as the elderly or disabled living with family members who have their own shopping priorities or needs. During SNAP eligibility interviews, the family structure is carefully evaluated to determine if multiple households may be authorized which would reduce the numbers, if any, of SNAP recipients co-shopping. Based on this discussion, it seems likely that co-shopping would have no measurable effect on SNAP shopping patterns.

Appellant's claim that SNAP households prefer convenience over savings and selection is also an assumption, not a fact, as no basis has been offered to substantiate this statement. Even if it were accurate, it does not explain why households who are regularly shopping at much larger stores (super stores or supermarkets) would spend comparable or sometimes much greater amounts at the Appellant firm on the same day or within 24 hours.

Appellant offered no evidence to validate its claim of the firm tabulating transactions on a rolling basis as an explanation for the close in time transactions in this Attachment. While a slight possibility of this occurring may exist at some convenience or small grocery stores, the physical layout of the Appellant firm would make it unlikely to be a viable explanation for Attachment 1. The firm's extremely small checkout area and the lack of any place for customers to place their items after tabulation would make this unworkable. Speculation aside, the real fact of the matter is that multiple SNAP households would not be making large purchases at a store with a very limited stock of eligible foods when they are already shopping at larger stores offering a greater selection of foods for lower prices so there would be no need for tabulating transactions on a rolling basis in the first place.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all, but one of the sets in this Attachment total \$102.98 or more when the comparable average small grocery store SNAP transaction amount in Essex County during the review period was \$11.88. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Office of Retailer Operations and Compliance's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a much smaller and very poorly stocked small grocery store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

For example:

One of the households analyzed received its monthly SNAP allotment of \$642.00 and spent \$6.00 at the Appellant firm. Approximately 30 minutes later it spent \$33.12 at a super store located 0.72 miles away and then spent \$5.37 at a medium grocery store located 0.07 miles away. Early the next morning, this same household conducted two transactions (\$112.00 and \$5.00) at the Appellant firm totaling \$117.00. Approximately 24 hours later, this household returned to the Appellant firm and spent \$58.00. Later that same day it traveled 0.21 miles to a nearby super store and spent \$21.08. In summary this household spent \$181.00 in four transactions over a 21 hour period while spending \$59.57 at two super stores and a medium grocery store. In a following month, this household conducted two transactions (\$132.00 and \$15.00) at the Appellant firm totaling \$147.00 in less than six minutes just hours before traveling 0.21 miles to a super store and spending \$149.27. The very next day, the household returned to the firm and spent \$21.26 in between two transactions at a medium grocery store (\$10.83 and \$26.66). In summary this household spent \$168.26 at the firm in three transactions over a 31 hour period while spending \$186.76 at a super store and a medium grocery store. It is inexplicable, based on the Appellant firm's very limited stock of staple foods, that any SNAP household would spend \$181.00 in legitimate purchases of eligible food items at the firm and then spend only \$59.57 at two far better stocked super stores and a medium grocery store. The Appellant firm carried no imported or specialty foods that would not

have been readily available at larger stores for less money. The state SNAP database shows this household's home of record is located approximately 0.4 miles from the Appellant firm and this is supported by its shopping pattern that includes transactions at five super stores and two supermarkets located between 0.21-3.45 miles of Appellant's location. It is highly unlikely that this household would conduct multiple high dollar transactions at a very poorly stocked small grocery store that was not located near its residence if it were only purchasing eligible foods that could be obtained at any of the larger stores it was regularly shopping at for less money. This unusual shopping pattern is indicative of trafficking. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

A different household received its monthly SNAP allotment of \$424.00 and spent \$30.84 at the Appellant firm and returned the next day conducting two more transactions (\$8.15 and \$200.00) totaling \$208.15. Less than two hours later, this same household traveled 0.78 miles and spent \$61.82 at a supermarket and then returned to the firm to spend \$7.20. In summary, this household spent \$246.20 in four transactions over approximately a 31 hour period while spending \$61.82 at a nearby supermarket within two hours of its \$200.00 purchase at the Appellant firm before spending \$13.89 at a supermarket located 8.55 miles away. In a subsequent month, this household spent \$96.28 at the firm and the very next day conducted two transactions (\$120.00 and \$108.00) totaling \$228.00 at the Appellant firm before traveling 8.55 miles to spend \$13.89 at a supermarket. The state SNAP database shows this household's home of record is located approximately 0.9 miles from the Appellant firm and this is supported by its shopping pattern with the majority of stores it shopped at clustered together in an area located 0.75-1.25 miles east of Appellant's location supporting that the household likely did not reside near the firm. Appellant offered no viable explanation as to why households, especially those whose primary shopping areas are located at a distance, would travel past larger stores that it shopped at that would offer a greater quantity and variety of eligible foods to spend extremely large dollar amounts at Appellant's small grocery store with its very limited stock. This unusual and suspicious shopping pattern is indicative of trafficking. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

There is no legitimate reason why these households and others with similar patterns would spend so much of their SNAP allotment at a very poorly stocked small grocery store when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking at the firm. This is further supported by the fact that the firm had a dramatic fall in Scan B2 transactions the month it received the charge letter. Following the receipt of the charge letter, the volume of SNAP redemptions at the Appellant firm decreased from an average of more than two sets per month during the six month review period to only one set during the combined months of July and August 2019. This is compelling evidence that the transactions sets in this Attachment are, in fact, trafficking. If trafficking were not occurring, these types of transactions would not have decreased so abruptly.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

Near Depletions of SNAP Benefit Accounts

This Attachment lists a total of 26 EBT transactions in 19 sets of one or more transactions involving 11 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. It is noted that 25 of the 26 transactions end in .00 cents that are not supported by store inventory or pricing. There are transaction set totals as high as \$350.00, \$341.00, \$284.00, \$228.00, \$221.49, \$193.00, \$192.00 (five sets), \$190.00, \$187.00, \$147.00, \$130.00, \$122.00, \$112.00, and \$108.00. It is further noted that 12 of the 19 transaction sets were conducted by single person households based on their monthly SNAP allotment of \$192.00. Depleting a household's SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP households. The fact that all, but one of the 26 transactions in this Attachment end in .00 cents combined with the fact that the vast majority (18 of 26) of the transactions were conducted by single person households is both irregular and suspicious for this type of store.

SNAP benefits are intended to supplement the food budget for recipient households whose net income is at or below the Federal Poverty Level. A government report on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 79.1 percent of a household's allotment remains unspent. Even after seven days, 42 percent of benefits still remain unspent. It typically takes two weeks to deplete 78.1 percent of one's benefits. This report further revealed that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (\$30.00 on average) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits at all for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

The FNS store visit report shows this is a small grocery store offering a very limited quantity and variety of staple foods as well as a variety of accessory foods and ineligible nonfood items. The report shows that the firm does not carry any unique items or offer any distinctive services that cannot be found at a number of larger grocery stores located nearby and at a distance. The firm is also located in an urban area with scheduled fixed route bus service available nearby that would facilitate shopping at other stores. Additionally, there are three super stores, two supermarkets, three large grocery stores, four medium grocery stores, and eight small grocery stores located within 0.94 miles of Appellant's location. The many larger stores would offer a

much greater quantity and variety of eligible foods at lower prices than Appellant's poorly stocked small grocery store. The Office of Retailer Operations and Compliance analysis of shopping patterns for households in this Attachment shows that they are regularly shopping at a variety of larger stores located nearby as well as at a distance. Based on these options, it is unlikely that most SNAP households who are shopping at larger stores that would offer a much greater selection of food items at lower prices would choose this firm as a destination for making large household food purchases.

SNAP households have no limits on the number of times they may use their card or how much eligible food they may purchase. The transactions are questionable because they are inconsistent with normal spending habits attributable to a store with this level and type of eligible food stock, and facilities. Therefore, this atypical behavior is indicative of trafficking.

Appellant's contentions of co-shopping and convenience have been addressed and refuted elsewhere in this decision and will not be repeated here.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 11 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, during the course of some hours, all on the same day. As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

Following the receipt of the charge letter, the volume of SNAP redemptions at the Appellant firm decreased from an average of more than three sets per month during the six month review period to no sets during the combined months of July and August 2019. This is compelling evidence that the transactions sets in this Attachment are, in fact, trafficking. If trafficking were not occurring, these types of transactions would not have decreased so abruptly.

High Dollar Value Transactions

This Attachment lists 93 individual EBT transactions ranging from \$51.49 to \$362.78 with 68 transactions exceeding \$75.00, 53 equaling or exceeding \$100.00, and six for more than \$300.00. While these high dollar amounts may not be unusual for a big box super store, the substantial number of extremely high dollar transactions is uncharacteristic for a small grocery store offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$11.88 for this store type in Essex County during the review period. This is unusual and indicative of trafficking. The same patterns noted in the first Attachment are also present in this Attachment.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the firm. These high dollar value transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop

and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is very limited, often on the same day, or within 24-72 hours of purchases at larger food stores.

For example:

A household shopped at two different super stores located 0.21 and 3.45 miles from Appellant's location in November spending \$14.92 and \$41.95. Less than one hour after the transaction at the second super store, a members only warehouse, this household spent \$115.03 at the Appellant firm. This same household spent \$267.67 at a nearby super store in February and 25 minutes later spent \$173.04 at the Appellant firm. In March, this household spent \$81.40 at a supermarket located 1.52 miles away and four hours later spent \$164.49 at the Appellant firm. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

A different household spent \$110.80 at a nearby super store on a late December afternoon and the very next morning conducted two transactions (\$91.32 and \$7.49) at the Appellant firm totaling \$98.81 in less than two minutes. The next month this household spent \$108.26 at a super store located 0.76 miles away also in the late afternoon and the very next morning spent \$127.30 at the Appellant firm. In March, this household spent \$8.35 at a nearby medium grocery store and five minutes later spent \$309.78 at the Appellant firm. It is beyond belief that this household could walk or drive from the medium grocery store to the Appellant firm, select more than \$300.00 worth of eligible food items, and complete the entire checkout process in five minutes and 13 seconds given the many steps required to complete a SNAP transaction and Appellant's extremely small checkout area, the lack of a scanner or shopping carts, and the very limited quantity and variety of expensive items. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

Both the FNS 2011 and the 2020 reports titled "*Benefit Redemptions in the Supplemental Nutrition Assistance Program*" for fiscal years 2007 and 2017, respectively, show that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a super store or a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (\$27.36 on average for 2017) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

No explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible foods at lower prices and who apparently have no transportation limitations would be conducting high dollar transactions at a very poorly stocked small grocery store. It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores,

supermarkets, and other larger grocery stores the households in this Attachment were regularly shopping at and these stores would also likely have significantly lower food prices yet these households continued to spend large dollar amounts at a small grocery store with a very limited stock of staple foods and no shopping carts that would be needed for the large transactions in this Attachment. There is no legitimate reason why these households would spend so much of their SNAP allotments at a very poorly stocked small grocery store when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking SNAP benefits at the firm. Based on this discussion, trafficking is the most viable explanation for these irregular shopping patterns.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience or small grocery stores out of necessity, this is not the case when they have better alternatives. FNS records show there were 20 comparably sized or larger authorized retail food stores within a 0.94 mile radius of Appellant's location that included three super stores, two supermarkets, three large grocery stores, four medium grocery stores, and eight small grocery stores. The two nearest medium grocery stores are located approximately one and two blocks away while the nearest super store is approximately three blocks away. The households listed in the charge letter Attachments regularly shopped at these larger stores as well as at additional larger stores located further away during the review period. These larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at Appellant's very poorly stocked small grocery store that carried almost no fresh unprocessed meats or seafood.

The difference in the total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount for Essex County small grocery stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 9.65 percent larger than like type Essex County stores while its average SNAP transaction amount is 60.69 percent larger and its total SNAP transaction count is 31.8 percent smaller than the County average. The high transaction volume and transaction amount average and the low transaction count are abnormal based on the firm's very limited stock of staple foods. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous two do not represent legitimate food purchases. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

Appellant's contentions regarding this charge have been previously cited and are addressed below.

Appellant is mistakenly equating a firm having sufficient stock to be qualified as a SNAP retailer with being a well-stocked store. While the Appellant firm does have adequate stock to qualify as a SNAP retailer, one has to look at the quantity and variety of a store's eligible food inventory before one can make a statement as to how well a store is stocked. A store can meet the

minimum stocking criteria under Criterion A to become a SNAP retailer by offering for sale, on a continuous basis, no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each food variety, and at least one variety of perishable foods in at least two staple food categories. In other words, a store can qualify with as few as 36 units of staple foods.

Appellant's arguments supporting the legitimacy of the transactions listed in this Attachment and in Attachment 1 are based on the Appellant firm being well-stocked. This is evidenced by Appellant's claims that the Appellant firm has a "significant inventory that encourages multiple trips", is "sufficient to account for the transactions", and that "... the inventory offered by the store is of such a variety that it's reasonable to assume a household could satisfy all of their needs on a single shopping trip." Even a cursory review of the April 3, 2019, FNS store visit report and photos would show that the firm had a very limited staple food inventory stocking almost no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, and a very limited quantity and variety of fresh fruit and vegetables. A more detailed synopsis of the FNS store visit may be found at the beginning of the Analysis and Findings section of this Decision. The firm's actual quantity and variety of staple food stock is very limited making it unlikely that any SNAP households would consider the firm to be their primary, or one of their primary, grocery stores and would likely only use the firm for small dollar value food purchases and possibly for purchases of ineligible items such as tobacco products or lottery. Accordingly, Appellant's claims regarding the store being well-stocked, particularly in "breads and cereals and meats", are without merit.

It should also be noted that not all stores trafficking SNAP benefits have a "gross discrepancy between the food purchased and the sales of the store, with more sales than the inventory could account for" as claimed by Appellant. Stores that limit trafficking to only close friends and/or family members would be far less likely to have such a "gross discrepancy" as would a store that was less selective in who it let traffick. No evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months so no determination of this could be made.

Appellant further contends that many expensive food items such as corn oil \$19.99, cases of Guatamala soda \$35.00, five pound cheese packages \$15.99, and Enfamil \$18.99, Filipino Berio olive oil \$24.99, Maseca corn meal \$30.00/\$25.99, and Dona Lisa Rice \$25.49 were missed during the FNS store visit. No documentation was offered by Appellant to show that the firm regularly purchased large quantities of these items. A review of the store visit report and the many photos taken during the visit show that the store did have Dona Lisa 20 pound bags of Jasmine rice as well as Filipino Berio olive oil and flats of Maseca corn meal; however, there were only two bags of Jasmine rice, one container of Berio olive oil, and one flat of the 2.2 pound bags of corn meal in stock. While the store did stock corn oil, soda, cheese, and flats of the 4.4 pound bags of corn meal, these bulk items are not something that would be purchased in multiple quantities or multiple times during a short period of time and therefore are not sufficient to explain the many high dollar value transactions in this Attachment.

Appellant is making assumptions not based on the facts. The question here is why would SNAP households bring multiple persons to help carry groceries at a small grocery store offering a very

limited stock of staple foods, as proposed by the Appellant, when these same households are already shopping at a variety of larger stores offering a greater quantity and variety of all foods for lower prices and which would have grocery carts and checkouts with scanners. The only believable answer is that they would not. While SNAP households living nearby may make small dollar purchases of a limited number of eligible food items at the Appellant firm for convenience sake, it is unlikely they would consider it to be their primary grocery store. This is supported by the 2011 and 2020 FNS studies previously cited that show SNAP households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket or super store. Participating households typically made several (just over nine on average) relatively small purchases (\$27.36 on average for 2017) with SNAP benefits each month.

Although the subject store may have contained sufficient inventory to satisfy any single charge letter transaction, this does not explain why a SNAP household would spend up to \$362.78 in a single transaction at a small grocery store with a very limited stock of staple foods, that is not optimized for bulk sales, and that is located in proximity to superiorly stocked competitor stores. Even if a hypothetical SNAP household consisted of a large number of members, it would still be much more likely to make high dollar purchases at larger competitor stores, such as supermarkets or super stores, that would offer a superior quantity and variety of stock, lower pricing, and ease of both shopping and checkout.

Information obtained during the April 3, 2019, FNS store visit on shows that the Appellant firm offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, drinks, and various single serving foods as well as many ineligible items. It is specifically noted that the firm had almost no fresh unprocessed meat or seafood, no frozen unprocessed meat or seafood, a very limited stock of processed meats or seafood, and a very limited selection of fresh fruits and vegetables. The fact that tobacco, lottery, alcohol, ATM, hot foods, household products, paper products, health and beauty items, money transfers, Western Union, toys, small kitchen appliances, hats, diapers, and phone cards that are not eligible for purchase with SNAP benefits also provides no justification for the large transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food dollars, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months. The firm also had an extremely small checkout area and no shopping carts thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a very limited stock of staple food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on July 3, 2019. Following the receipt of the charge letter, the volume of SNAP redemptions at the Appellant firm decreased 54.68 percent from June 2019 to August 2019 while the number of SNAP transactions decreased 10.29 percent and the average dollar amount of SNAP transactions decreased 49.45 percent over the same period of time. A pronounced fluctuation in SNAP redemptions following the charge letter receipt is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts. The substantial decreases in sales volume, number, and average dollar amounts is substantial evidence of suspicious transactions at the Appellant firm that can most likely be attributed to trafficking of SNAP benefits.

Based on these discussions, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Credit Contentions

Appellant, through counsel, contends the firm allows credit accounts, a violation of SNAP regulations at Section 278.2(f), as stated in Appellant's July 19, 2021, brief. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP transactions. When store ownership signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It agreed to accept responsibility for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically cites violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, Appellant now admits that the firm allowed credit accounts, a clear violation of SNAP rules and regulations. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon authorization, cite credit accounts as violating SNAP regulations. Had store ownership reviewed the SNAP training materials or trained its employees using them, it is inconceivable that it would not have been aware that credit accounts violate SNAP regulations.

Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4). It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts.

Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

Appellant's admission to extending credit is documented in the brief submitted via email on July 19, 2021, by counsel. A review of the record shows that Appellant submitted no documentation supporting the existence of credit accounts at the firm. Additionally, it is highly suspect that credit accounts do, in fact, exist since they were not mentioned in the original reply to the charges submitted via email on April 5, 2021.

Appellant failed to provide any evidence in support of the admission to accepting SNAP benefits for payment on credit accounts. Since Appellant was unable to account for any of the charge letter transactions as being due to credit, the original determination made by the Office of Retailer Operations and Compliance was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

Other Contentions

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in 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. Appellant's other contentions are addressed in this section.

The USDA Food Plan refers to the amount spent by different sized households at all stores in a week or in a month, not at a single store, and therefore provides no evidence or explanation for the suspicious shopping patterns exhibited by the households in the three Attachments.

In regard to case law cited by Appellant, considerations of relevant legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review. This

review relies upon the statute and regulations governing the SNAP and evaluates whether the decision to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. Appellant's case law references are acknowledged in this context only.

Appellant asserts that recent administrative review cases discuss the precedent that should be considered in this case including *Howard's Quik Mart vs. Retailer Operations Division* and *Gloesis Group vs. Retailer Operations Division*. The sentence in *Howard's Quick Mart* regarding trafficking being the "only plausible explanation" was incorrectly included in that decision. As stated elsewhere in that decision, as well as earlier in this decision, in an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. Appellant mischaracterizes the findings of *Gloesis Group* as that decision clearly states that the determination was based on the preponderance of the evidence.

Appellant also claims that determinations made by certain administrative review officers imply that the presence of relevant evidence from the retailer, such as itemized cash register receipts, comprehensive pricing information, SNAP recipient statements, federal business tax returns, state tax filings, business banking statements, inventory records, etc. would be sufficient to conclude that trafficking was more likely to have not occurred at firms under review. Appellant cited cases indicating that if such documents were provided, the presence of these documents would have changed the outcome of the analysis. While documents such as those cited are useful in determining whether the charge letter transactions represent legitimate purchases of eligible food items, their mere existence does not provide compelling evidence in support of the transactions being legitimate. Any documents provided must be fully analyzed to determine their probative value in the matter under review.

For example, in *Tommy's Mini Mart*, Appellant claims the FAD identified the following as being adequate explanations for the presence of Scan B2 and Scan F transactions:

- Significant inventory that encourages multiple shopping trips, like the presence of a deli or meat by the pound;
- Lack of transportation for local SNAP households; and,
- Absence of local large SNAP retailers.

However, a review of the Analysis and Findings section of the FAD in *Tommy's Mini Mart* shows that the analysis consisted of a single sentence: "A review of the ROD case file indicated the ROD failed to establish that Appellant trafficked in SNAP benefits." Appellant, through its current attorney, has undermined its credibility in the present case by its apparent willingness to manufacture precedents from previous administrative review decisions.

Please note that this administrative review decision is based on the specific circumstances of this case as documented by materials provided by both the Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede Federal law, regulations or policy guidance.

Regarding Appellant's contentions concerning the ALERT system, the record in this case documents that the Office of Retailer Operations and Compliance analyst knew the limitations of the ALERT system and that ALERT does not identify trafficking, but only identifies suspicious transaction patterns. This knowledge was used to conduct a thorough examination and analysis of pertinent information that ultimately lead to the determination of trafficking at the Appellant firm. The record, as previously stated, also shows that the analyst correctly identified like type stores offering the same type of foods and used these stores as comparison stores. There is also no basis to support Appellant's claim of a "Confirmation Bias" being present in this case. The firm had a very limited staple food stock as evidenced by the FNS store visit report and photos, had suspicious transaction patterns, and had insufficient inventory to support redemptions. Appellant's information regarding the Correlation Coefficient and the ALERT system is noted. As previously stated, a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. FNS uses the ALERT system to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS conducted an in-depth analysis to determine if a charge letter was be issued and if the only plausible explanation for the transactions presented in the charge letter was trafficking.

Appellant claims that co-shopping may account for some of the transaction sets has been previously addressed and will not be repeated. Appellant also included "the credit system" as one of the explanations for the legitimacy of the charge letter transactions; however, no contentions relating to, or evidence of, credit was offered.

Appellant's reference to the FNS Profile of SNAP Households and demographic data for area residents including statistics on households with children or older members as well as the median income of SNAP households is noted. SNAP recipients are by definition low income and most cities and towns have low income neighborhoods so it is not unusual for SNAP authorized retail stores to be located in low income areas with many SNAP recipients. While these characteristics are common to many SNAP retailers, neither they nor the demographic data offered by Appellant provide a justification or explanation for the charge letter transactions

Regarding the report in the April 2016 edition of Convenience Store News, Appellant claims the data listed specifically addresses SNAP recipient shopping behaviors when a review of the entire report shows it makes no statements regarding SNAP recipients. The FMI's US Grocery Shopping Trends 2016 survey also provides no data pertaining to SNAP households. As previously discussed, the USDA report on foods typically purchased by SNAP households shows that recipient shopping habits are not always the same as those of traditional consumers and therefore it is inappropriate for the Appellant to make statements regarding SNAP recipient shopping behaviors, including co-shopping, without having data specific to SNAP recipients.

The Elsevier studies by Dr. Alison Gustafson and Jerry Shannon are noted; however, neither study provides direct evidence pertaining to the subject firm, nor do they provide an explanation for the unusual, irregular, and inexplicable transactions in the matter under review.

The owner and the firm were charged with trafficking based on a computer analysis of the store's

transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. SNAP regulations at 7 CFR § 278.6(a) clearly state that “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”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Office of Retailer Operations and Compliance staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do

not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Office of Retailer Operations and Compliance determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant, through its original attorney, failed to request or to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Office of Retailer Operations and Compliance determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

It is noted for the record that the June 28, 2019, FNS charge letter states that, “If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter. No extension of time can be granted for making a request for a CMP or for providing the required documentation.”

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not request a CMP or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Office of Retailer Operations and Compliance’s decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Office of Retailer Operations and Compliance presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store’s staple food stock as observed during the store visit to support large transactions in short time

frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Office of Retailer Operations and Compliance properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

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 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

September 15, 2022