

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

Jordan Supermarket,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0220597

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 Jordan Supermarket (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 October 9, 2019, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in April 2019 through July 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 responded to the charges in a letter postmarked October 17, 2019, that did not request a CMP or contain any documentation in support of one. This response; however, did contain a Freedom of Information Act (FOIA) request. USDA FNS responded to this request in a letter dated November 22, 2019. Appellant subsequently requested an appeal of the content of the FOIA response by letter dated February 19, 2020. The final FOIA appeal reply was issued on April 27, 2021, and sent to Appellant. A reminder of the opportunity to submit any new information following receipt of the FOIA appeal was sent to Appellant on April 28, 2021. Appellant requested an extension of the time to respond in a phone call to Retailer Operations staff on May 3, 2021. This request was approved in a letter dated May 3, 2021, for an extension till June 9, 2021. This approval also stated that it did not extend the time to request and provide documentation for a trafficking CMP.

Appellant responded to the charges in a letter dated May 3, 2021, that admitted to offering credit, but did not request or provide any supporting documentation for a CMP. Appellant, through counsel, responded to the changes in a second letter dated May 5, 2021, that also admitted to offering credit. Upon receipt of both responses admitting to offering credit, evidence of credit accounts was requested by FNS letter dated May 26, 2021. Appellant, through counsel, responded to this request in correspondence dated June 1, 2021, that included a handwritten statement by the owner stating that when he sold the business, he forgot to take the papers with him and when he returned a week later, the new owner had thrown everything in the trash. Records provided by Appellant show the firm was sold on January 1, 2020. The Office of Retailer Operations and Compliance notified Appellant by letter dated June 16, 2021, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP 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 17, 2021, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. No subsequent correspondence from counsel was received.

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 four month period of April 2019 through July 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. 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:

- The firm has been in business and accepting EBT since 2013 with no SNAP violations. The firm is a fully functioning grocery store and customers buy groceries for their entire household as would a customer at a grocery store;
- Many people needed help in 2019 to be able to eat so the owner would give them food on credit and they would pay him back at the beginning or at the end of the month. The owner never did this to benefit himself, only to help out the community;
- The multiple transactions are because there are numerous individuals in large households and a significant number of unemployed customers frequent the store;
- SNAP regulations at 7 CFR section 278.6(d) state that the FNS regional office shall consider:
 - 1) The nature and scope of the violations committed by personnel of the firm,
 - 2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
 - 3) Any other evidence that shows the firm's intent to violate the regulations.

Under this section, the owner and his employees have not violated SNAP law as their transactions are based on the sale of qualified merchandise;
- A CMP in lieu of permanent disqualification is requested. Under Criterion 1: The owner implemented an effective compliance policy as described above. A photocopied booklet is provided to each of its employees and issues concerning EBT processing are addressed as questions and issues arise. The owner has been in business and accepting SNAP since 2013 and since then has been active in ensuring full compliance with his employees and their obligations to USDA FNS. The compliance policy clearly states there is no exchange of cash for EBT, no store credit is allowed for EBT, and only sell qualified grocery items to customers. Under Criterion 2 and 3: The owner uses the SNAP Retailer Training Guide and has provided training, in-store training, and a copy of the manual to all employees and store operators. The contents of the manual are discussed and reviewed with employees and partners of the business on a semi-annual basis. Each employee is told to call USDA or the owner if they have any questions. Employees are reminded to never give cash in return for EBT, to disallow sales to known friends of the cardholder if it appears the cardholder is outright paying for the groceries of a person not in their household, and to disallow sales on unqualified EBT items. Under Criterion 4, the owner has invested a significant amount of money into opening a grocery store in an impoverished area where any grocery store would depend heavily on EBT sales to stay in business. The owner tried his best to abide by USDA guidelines, but he simply could not turn away the people from his community. He fully understood the consequences of his actions and wants to ensure that he would never repeat those actions again. He did not benefit from said transactions, instead he did allow transactions to occur for the benefit of the community; and,
- The owner promises this will never happen again and requests a six month suspension or a CMP in lieu of disqualification.

Appellant submitted a copies of the previously submitted owner statements dated May 3, 2021, and June 1, 2021; a copy of the Bill of Sale for the firm dated January 1, 2020; a copy of a loan agreement dated June 10, 2021, between the Appellant and the buyer of the firm in the amount of \$15,000.00 which is the purchase amount previously agreed upon; and a handwritten statement

by the owner dated June 9, 2021, stating that he had not received the May 2021 loan payment because the new owner has no money 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 26, 2012, and most recently reauthorized the firm on September 9, 2019. The record indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during a July 26, 2019, store visit conducted by a 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 moderately sized convenience store offering a minimal quantity and variety of staple foods and carrying no unique items or offering any distinctive services. The store stocked the traditional American brands and Goya products typically found in like type stores.
- The store visit report and photos showed no shopping carts and only seven 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.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles, seafood specials, or fruit/vegetable boxes for sale.
- The checkout area was an opening set into a clear plastic storage wall and was approximately 4.0 feet wide and 1.0 feet deep with food displays on one side leaving a very limited area for customers to place their purchases. The checkout area was located

above a chest freezer containing ice cream that would make it more difficult to pass items to the clerk. The very small checkout area would make it problematic to process large orders. The checkout area had one cash register, a POS terminal, and no optical scanner as confirmed by the store clerk.

- The firm had a minimal stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- The firm had a large deli counter with deli meats and cheeses and a sizeable kitchen/food prep area containing a commercial slicer, commercial scale, microwave oven, deep fat fryer, cooktop grill, two burner range, commercial exhaust hood, stainless steel prep tables, three-part sink, chest freezers with stock for hot/cold foods, etc. The store visit report noted that store food stock was not being used in the preparation of the hot and cold prepared foods. A large menu board advertised a variety of hot/cold sandwiches, hot entrees, hot breakfast items, hot sides, etc.
- The firm had no fresh or frozen unprocessed meat, a very limited stock of packaged Pollack fillets, no fresh or frozen unprocessed seafood, a variety of processed meats and seafood (canned meat, poultry, and fish; bacon; hot dogs; salami; sausages; deli meats; dried packaged seafood; frozen foods (fish sticks, TV dinners, chicken entrees, hamburger patties; brown N serve sausages); and jerky), eggs, a moderate selection of fresh and frozen fruits and vegetables, dried beans, no other dried fruit or vegetables, no packaged nuts, no single serving packaged nuts, 100 percent fruit juices, no 100 percent vegetable juices, no fresh fruit cocktails, canned soups, a moderate quantity and variety of canned and packaged staple food items, deli cheese, packaged cheese, no single serving cheese, no yogurt, single serving yogurt, no single serving yogurt drinks, butter, margarine, no sour cream, fresh milk, no single serving fresh milk, canned milk, half & half, coconut milk, no soy milk, almond milk, Lactaid milk, powdered milk, single serving milk drinks, no cottage cheese, cream cheese, whipped cream, loaves of bread, French bread, croissants, rolls, tortillas, no pitas, tostadas, corn meal, AP flour, rice flour, Maseca flour, no corn flour, sugar, rice (a variety of sizes up to 50 pound bags), cold cereal, single serving cold cereal, hot cereal, single serving Ramen noodle soup, canned pasta, single serving pasta, dry pasta, dry noodles, pancake mix, baking mixes, mac&cheese, single serving size mac&cheese, no cold ready-to-eat sandwiches, no frozen heat & eat sandwiches, frozen foods (French fries, lasagna, pancakes, waffles, Hot Pockets, pizza, onion rings, etc.), cooking oil, coffee, tea, cocoa, baby food meats, baby cereal, baby foods, infant formula, soy infant formula, and very few expensive staple food items.
- Ineligible items included: lottery, tobacco, hot food, hot drinks, household products, paper products, auto products, health and beauty items, ATM, clothes, electronics accessories, and umbrellas while accessory foods included: candy, condiments, snacks, baked goods, cooking oil, baking mixes, sugar, single serving ice cream, spices, coffee, tea, cocoa, and un/carbonated drinks.
- The firm's hours of operation, as confirmed by the clerk, were open 7:00 AM-10:00 PM daily. The clerk also stated that the firm did take phone orders, did not take online grocery orders, did not deliver groceries, and did not round transaction totals up or down.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.

- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the clerk, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most 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: a 2.5 gallon container of corn oil (three in stock) priced at \$24.99, a 12.9 ounce container of Enfamil baby formula (10+ in stock) priced at \$23.49, a 50 pound bag of rice (seven in stock) priced at \$22.99, and a 40 ounce package of salami (six in stock) priced at \$17.99. This listing of the most expensive items was provided by the clerk during the store visit.
- The firm had been, but was not currently a WIC vendor. While the firm did stock a limited selection of baby foods and formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers at WIC vendors, not SNAP EBT at the Appellant firm.

Multiple transactions in unusually short time frames

This Attachment documents 40 individual transactions in 18 sets of two or more transactions conducted by 10 different households in a short period of time. Individual transaction amounts range from \$20.00 to \$148.33 with 20 transactions for more than \$50.00 and seven transactions exceeding \$100.00. The transaction set totals are as high as \$208.73, \$174.63, \$173.88, \$168.38, \$166.05, \$158.11, \$155.68, \$145.17, \$144.71, \$135.63, \$129.18, \$112.35, \$106.16, \$105.22, \$102.61, and \$101.79 to list the highest. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 10 of the 16 sets. The span of time for transaction sets ranges from 42 minutes to more than 33 hours with 11 of the 18 sets occurring over consecutive days. Four transaction sets are comprised of three individual transactions while the remaining 14 sets are comprised of two individual 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 contends the multiple transactions are because there are numerous individuals in large households and a significant number of unemployed customers frequent the store. No evidence supporting either of these claims was offered by Appellant.

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 a convenience 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 right after checking-out, of household members/friends shopping together and making separate purchases, of a household dividing its purchases, or of households making a separate purchase to check their balance followed by another transaction as all of the 18 transaction sets occur more than 42 minutes apart with 11 sets occurring over consecutive days. The transaction sets also do not contain the

characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.27 with 12 of the 18 sets having subsequent transactions of \$33.75 to \$135.83, far more than the cost of a forgotten item or two. Appellant offers no explanation as to why households would conduct up to three sizeable transactions at a minimally stocked convenience store within a short period of time when there are many larger retail food stores where these households are regularly shopping that includes one super store, two supermarkets, six medium grocery stores, 10 small grocery stores, and 16 convenience stores located within a 0.99 mile radius of Appellant's location with the nearest medium grocery store located only 141 yards from Appellant's location while the nearest supermarket is approximately 10 blocks away. These larger stores would offer a much greater quantity and variety of foods at lower prices than the Appellant firm and their proximity would make it unlikely that any SNAP recipient would consider the Appellant firm to be their primary source for groceries.

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 of the sets in this Attachment total \$76.57 or more when the comparable average convenience store SNAP transaction amount in Camden County during the review period was \$8.31. 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 like type 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 comparably sized or larger food stores located nearby and at a distance from Appellant's location, including super stores and supermarkets. Their analysis also showed numerous households that shopped at the Appellant firm and at a super store and/or supermarket on the same day or within 24-72 hours and inexplicably spent more at Appellant's convenience store than they did at the super stores and/or supermarkets. Appellant failed to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases often totaling to comparable or higher dollar amounts at a minimally stocked convenience store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at supermarkets and super stores. 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 or supermarkets they were already regularly shopping at for less money and therefore the more plausible explanation is that these households were trafficking SNAP benefits at the Appellant firm.

For example:

A household received its monthly SNAP allotment and went to the Appellant firm where it conducted a balance inquiry to determine the amount on its EBT card and 15 minutes later spent \$8.00. Later that same day this household spent \$179.10 at a supermarket located 0.56 miles away and less than 50 minutes later spent \$51.09 at the Appellant firm. The next day this same household returned to the Appellant firm where it again conducted a balance inquiry to determine the amount on its EBT card and then spent \$114.96 leaving only .68 cents remaining in its SNAP allotment to purchase food during the remaining 29 days until its next SNAP issuance. A week later this household again went to the Appellant firm where it again conducted a balance inquiry to determine the amount on its EBT card and then spent .40 cents leaving just .18 cents. This household only shopped at the Appellant firm two more times during the remainder of the review period (three months and three weeks). In summary, this household spent \$174.45 at the Appellant firm in four transactions, three of which were preceded by a balance inquiry, while spending \$179.10 at a nearby supermarket in the middle of the transactions at the Appellant firm. It makes no sense for a household to shop at Appellant's minimally stocked store and spend \$166.45 in allegedly legitimate purchases of eligible food items at the Appellant firm just minutes after having just spent \$179.10 at a store with a substantially greater quantity and variety of staple foods that included fresh meats, fresh seafood, and fresh produce. Appellant offered no explanation as to why a household with unfettered access to transportation, as evidenced by its shopping at 14 other stores that included two super stores and two supermarkets located up to 2.39 miles away, would spend so much of its limited SNAP benefits at Appellant's minimally stocked store when the supermarket would have offered a much greater quantity and variety of staple foods at better prices.

It is also unusual and suspicious that this household conducted three balance inquiries at the Appellant firm when SNAP EBT receipts are required to list the amount spent on a transaction along with the dollar amount of SNAP benefits remaining in the account. It is not unusual for SNAP retailers that are trafficking SNAP benefits to have a recipient's EBT card and PIN in their possession and to conduct a balance inquiry before conducting trafficking transactions. This unusual and erratic shopping pattern is indicative of trafficking.

It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores, supermarkets, and the 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 convenience store with a minimal stock of staple foods. The more plausible explanation is that these households were trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking. There is no legitimate reason why these households would spend so much of their SNAP allotments at a minimally stocked convenience store when they clearly had access to and frequently shopped at nearby and distant supermarkets and super stores. Appellant also offered no explanation as to why households residing at a distance would use their limited cash resources to travel miles from their residence to shop at Appellant's very minimally stocked convenience store. The more plausible explanation is that these households were trafficking at the firm.

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.

High Dollar Value Transactions

This Attachment lists 78 individual EBT transactions ranging from \$50.43 to \$155.19 with 17 transactions for more than \$100.00. Three transactions occurred more than 25 minutes outside of the firm's reported business hours of 7:00 AM-10:00 PM. It is an indication of potential trafficking when there are numerous transactions occurring outside of a store's reported business hours. The substantial number of high dollar transactions is uncharacteristic for a convenience store offering a minimal 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 \$8.31 for this store type in Camden County. This is unusual and indicative of trafficking.

It is also noted that this Attachment included two manually keyed transactions by the same household. FNS records show that this household conducted 54 total transactions during the review period using the same EBT card and only shopped three times at the Appellant firm with all three transactions being manually keyed (April 3-4, 2019 for \$43.98, \$64.95, and \$64.95). This household had no other manually keyed transactions during the review period and shopped at 18 different stores, 14 of which were located more than 3.99 miles from Appellant's location. Manual transactions are those in which the magnetic strip on the household's EBT card is not being read by the store's POS device when the card is swiped and the clerk must manually key enter the lengthy EBT card number. A review of other EBT transactions at the firm on the dates of the manual transactions show that Appellant's POS device was functioning properly as there were swipe transactions immediately before and after the manual transactions. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. It is an indication of trafficking when the same card is used for both manual and swipe transactions. In cases of trafficking, the manual transactions occur when a household gives a retail store its EBT card number as well as the PIN so that store employees can manually key enter the card number and then enter the PIN without needing to have the actual EBT card.

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 Appellant firm. These high dollar value transactions remain questionable when considering the proximity of the 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 minimal, often on the same day, or within 24-72 hours of purchases at larger food stores.

For example:

A household received its monthly SNAP allotment and on the same day spent \$14.67 at the Appellant firm, \$15.00 at a combination grocery store located 2.22 miles away, \$230.17 at a large grocery store located 1.82 miles away, \$69.08 at a super store located 0.76 miles away, and \$7.96 at a medium grocery store located 0.12 miles away for a total of \$336.88. Despite having spent \$336.88 at a variety of stores located nearby and far and only 13 minutes after the transaction at the medium grocery store, this household returned to the Appellant firm and spent \$134.68.

A second household spent \$34.94 and \$28.76 at two super stores located 4.37 and 1.85 miles away for a total of \$63.70 before spending \$127.69 at Appellant's minimally stocked convenience store. The very next day the household spent \$75.02 at a store located 2.91 miles away that specializes in fresh produce.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 35 comparably sized or larger stores that includes a super store, two supermarkets, six medium grocery stores, 10 small grocery stores and 16 convenience stores located within a 0.99 mile radius of the Appellant firm where households listed in these Attachments are regularly shopping as well as additional larger stores located further away. The nearest medium grocery store is only 141 yards from Appellant's location. The larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood.

The difference in the, the total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount for Camden County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 256.67 percent larger than Camden County convenience stores while its average SNAP transaction count is 202.97 percent larger and its total SNAP transaction amount 17.69 percent larger. A comparison of the firm's total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount to Camden County small grocery stores yielded similar results. The high number of SNAP transactions and the extremely large dollar volume combined with the much lower average SNAP transaction dollar amount is an indication the firm may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. 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 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.

The firm also had irregular SNAP transaction data compared to like type stores in Camden County. A comparison of Appellant's redemption data to the average for County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume is significantly higher than that of like type stores in all ranges up to the \$150.00-\$159.99 range at which point transactions stopped. It is unusual that Camden County convenience stores began averaging less than one transaction in each range after the \$60.00-\$69.99 range while the Appellant firm has transactions up to the \$150.00-\$159.99 range, more than double that of like type County stores. This transaction pattern does not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Office of Retailer Operations and Compliance determined there was no credible reason for the firm to have transactions at these dollar levels given the very minimal stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant offered no explanation for the high dollar value transactions listed in this Attachment.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Office of Retailer Operations and Compliance shows that Attachment households are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Information obtained during the July 26, 2019, FNS store visit on shows that the Appellant firm offers a minimal 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 did not have any fresh or frozen unprocessed meat or seafood. The fact that lottery, tobacco, hot food, hot drinks, household products, paper products, auto products, health and beauty items, ATM, clothes, electronics accessories, and umbrellas 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 benefits, 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 has a very 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 minimal 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.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following the receipt of the charge letter on October 11, 2019. The volume of SNAP redemptions at the Appellant firm decreased 19.2 percent from September 2019 to November 2019 while the number of SNAP transactions decreased 20.84 percent and the average dollar amount of SNAP transactions increased 2.2 percent during the same timeframe. The significant decrease in the dollar volume and transaction count combined with the slight increase in the average transaction amount further supports the FNS conclusion that the firm was attempting to obscure trafficking by dividing large dollar value transactions into a series of smaller dollar value transactions. 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.

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

Credit Contentions

Appellant, in its May 3, 2021, handwritten statement, contends the firm allowed credit accounts, a violation of SNAP regulations at Section 278.2(f), as evidenced by Appellant's written statement. 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, ownership 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 June 1, 2021, handwritten statement says that the owner forgot to take the credit papers with him and when he went back a week later to pick them up, the new owner had already thrown everything in the trash.

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

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 the 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.

The three criteria from SNAP regulations at section 278.6(d) are not bases to be met in order for a firm to be disqualified, but are those areas that FNS considers in determining the appropriate level of sanction for firms that have violated SNAP regulations. There is no level of sanction for cases of trafficking as the Food and Nutrition Act, as amended, and SNAP regulations state FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

The ownership 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 failed 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.

To be considered eligible for a trafficking CMP a firm must establish, by substantial evidence, its fulfillment of each of the criteria listed in Section 278.6(i). SNAP regulations are explicit in what constitutes substantial evidence. Specifically, 7 CFR § 278.6(i)(2) states in relevant part, “As specified in Criterion 3 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with part 278 of current FNS regulations and current FSP policy on the proper acceptance and handling of food coupons.” This section goes on to state, “As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation.” This section further states, “A firm which seeks a civil money penalty in lieu of permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted...”

Appellant did not submit a copy of the firm’s SNAP compliance policy and program, any dated training curricula and records of training sessions, or any other evidence supporting the existence of the compliance policy and program at the Appellant firm.

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 or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i) within the specified timeframe. Based on

the above, the Retailer Operations Division'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 two 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

June 21, 2022