

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

McClure Kwikway,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248897

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against McClure Kwikway (hereinafter “McClure Kwikway” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

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

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7. . . may file a written request for review of the administrative action with FNS.

CASE CHRONOLOGY

In a letter dated March 16, 2022, the Retailer Operations Division informed the Appellant that McClure Kwikway was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on March 18, 2022.

In responses to the Retailer Operations Division of March 21, 2022 and March 28, 2022, the Appellant, through counsel, replied to the letter of charges by sending a signed Letter of Representation. No

contentions or arguments were provided by counsel or the Appellant with regard to the charges outlined in the March 16, 2022 letter of charges.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated March 29, 2022, informing the Appellant that McClure Kwikway was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked April 6, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated April 7, 2022. In an email correspondence of April 27, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is covered in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, *inter alia*:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

Trafficking means... The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from March 2021 through July 2021. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter, in the administrative review request, and in subsequent correspondence, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant is a small convenience store providing groceries and everyday needs to residents in a rural area of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The majority of the Appellant's customers are SNAP recipients.
- The owner did not intentionally violate the store's SNAP authorization.
- The owner is extremely busy contributing services to the community and must rely on employees to operate the store.
- After researching receipts and records, it has come to the owner's attention that one employee in particular was not operating the store's sales of SNAP benefits correctly.
- The employee is no longer working at the Appellant.
- The Appellant's technology needs updating. This would allow SNAP-eligible items to be observed more carefully by separating them from other items. A new or updated POS system would help eliminate any confusion as to how to correctly separate SNAP-eligible items from ineligible items.
- Employee training on the knowledge and importance of SNAP will also be enforced. This will help employees to have a better understanding of how SNAP works and the disadvantages of delinquent mistakes of operation. Plans to update and educate are currently being scheduled.
- The Appellant is an important staple for local residents as it is the only store within 10-15 miles. The store serves many who have difficulty with transportation as it is within walking distance.
- A SNAP disqualification would impose a hardship on the citizens who rely on this store for everyday needs and groceries.

In support of these contentions, the Appellant, through counsel, submitted the following information for review:

- Charge Letter Attachments; and
- 59 EBT register receipts.

ANALYSIS AND FINDINGS

SNAP Authorization and Compliance History

FNS authorized McClure Kwikway for participation in the SNAP on August 22, 2019. During the review period of March 2021 through July 2021, McClure Kwikway was classified as a convenience store. The owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

The Department of Agriculture conducted an investigation of the compliance of McClure Kwikway with Federal SNAP law and regulations during the period March 10, 2021 through March 16, 2021. During one of the four store visits conducted at the subject firm, the Appellant accepted SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). As a result, FNS issued the Appellant an official warning letter on March 31, 2021 informing the firm that if it is again found to be in violation of the regulations, the firm may lose its authorization to participate in the SNAP. The warning letter also stated that the firm should take every precaution to make sure the owner and employees know and follow the SNAP regulations. The Appellant was also notified that SNAP retailer training materials are available on-line for review and for use in preventing future violations. The warning letter provided a link to FNS' website to obtain current SNAP training materials and SNAP regulations.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 16, 2021 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,536 square feet in size with approximately 336 square feet of storage area outside of public view (outside the store) which stocked predominantly ineligible nonfood items;
- Had storage coolers/freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One cash register and two EBT point-of-sale (POS) devices for use in ringing-up SNAP transactions;
- Had an optical scanner;
- One small checkout counter area with limited check-out counter space;
- Had empty shelves;
- Had an ATM or money transfer service;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$x.x9 or \$x.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone orders were taken;
- Lunches are sometimes delivered to local coal miners if the store has enough employees on duty;
- The six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Crazy Italian Take-N-Bake pizza at \$9.99 per 23.2 to 27.7 ounce pies; Jack Links jerky at \$8.09 per 3.25 ounces; Red Bull energy drink at \$7.99 per 4-pack (8.4 ounce cans); Folgers coffee at \$7.69 per 11.3 ounces (2 units in stock); chef and grilled chicken salads at \$7.49 per 1 pound 8 ounces (5 units in stock); and Folgers coffee at \$7.39 per 7.39 ounces (4 units in stock);
- No fresh or frozen unprocessed meats, poultry, or seafood;

- Firm had two chest freezers—one which stocked ice cream and the second which stocked frozen food items such as French fries, pepperoni pizza, hush puppies, buttermilk biscuits, chicken fritters, pork sausage patties, and corn dogs which were advertised as Pick 5 for \$19.99;
- Had a kitchen and hot foods were sold; Hot foods menu was posted in store;
- Had a deli/prepared food section in which pre-made salads and deli sandwiches were stocked;
- Deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, hot dogs, meat jerky, packaged lunch meat, and canned fish;
- Dairy included milk, margarine, and cheese;
- No fresh produce stock other than a few pre-made salads;
- Other staple foods available for purchase included such items as juice, pasta, cereal, oats, baking mix, loaf bread, buns/rolls, corn meal, flour, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, snack foods, and vegetable oil; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, lottery tickets, automotive supplies, housewares, pet supplies, gasoline, and alcohol.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 20 sets of transactions (52 total transactions) that total \$2,723.98 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 9 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

The Appellant contends that it is a small convenience store providing groceries and everyday needs to residents in a rural area of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The majority of the Appellant’s customers are SNAP recipients.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter 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 Appellant's stock and facilities and are therefore, indicative of trafficking.

5 U.S.C. § 552 (b)(7)(E).

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a moderate food stock, no fresh produce other than a few pre-made salads, no fresh or frozen unprocessed meats, poultry, or seafood, and a moderate variety and amount of frozen food stock.

The store visit report, which was completed in collaboration with and signed by the store manager, and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at McClure Kwikway multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The store visit observations also indicate that the firm did not offer a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores. The store visit observations also indicate that the firm's checkout area was limited in size, the firm had only one cash register to ring-up food purchases, there no shopping carts or hand-held baskets available to customers for transporting food within the store, and there were no conveyor belts to expedite high dollar or rapid consecutive purchases. The customers have no place to put multiple purchases or carry the items while shopping.

The available inventory of SNAP-eligible food is typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The second, third, and fourth transactions in each set are too large to consist of forgotten items. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The Appellant contends that the owner did not intentionally violate the store's SNAP authorization. After researching receipts and records, it has come to the owner's attention that one employee in particular was not operating the store's sales of SNAP benefits correctly.

However, prior to becoming authorized to participate in the SNAP on August 22, 2019, the owner completed and submitted a SNAP Application for Retail Stores. 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. The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits for ineligible non-food items or as repayment on credit accounts.

Regardless of who the store owner utilizes to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Upon SNAP authorization, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application. The *SNAP Training Guide for Retailers*, which retailers can access online in English and in Spanish (<https://www.fns.usda.gov/snap/retailer/training>) states that “You are legally responsible for your own actions and the actions of everyone who works in your store whether or not they are paid. If you, your employees, or your family break the Program’s rules, you can be disqualified from the Program, may be assessed a monetary penalty, and may face criminal prosecution.”

The owner was issued an official warning letter by FNS on March 31, 2021 for the sale of ineligible nonfood items during an onsite compliance visit. The owner was informed that if the store is again found to be in violation of the regulations, the firm may lose its authorization to participate in the SNAP. The warning letter also stated that the firm should take every precaution to make sure the owner and employees know and follow the SNAP regulations. The Appellant was also notified that SNAP retailer training materials are available on-line for review and for use in preventing future violations. The warning letter provided a link to FNS’ website to obtain current SNAP training materials and SNAP regulations. As such, the owner has failed to properly train employees on the SNAP rules and understand his agreement to be responsible for the employees he hires to conduct SNAP transactions.

The Appellant contends that the store is an important staple for local residents as it is the only store within 10-15 miles. The store serves many who have difficulty with transportation as it is within walking distance. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient’s lack of access to other SNAP authorized stores. According to the U.S. Census Bureau, the Appellant is located in a rural area. During the review period there were 2 SNAP authorized retailers located within a 3.0 mile radius of McClure Kwikway, including 2 other convenience stores, and 21 SNAP authorized retailers located within a 10.0 mile radius of McClure Kwikway, including 1 supermarket, 1 large grocery store, and 3 small grocery stores, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than McClure Kwikway and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at McClure Kwikway during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant’s abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods and not the result of trafficking of SNAP benefits. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. This burden has not been met.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This charge letter Attachment documents 77 SNAP transactions, as large as \$300.00, that total \$6,934.69. These transactions were conducted by 24 different SNAP households. These large transaction amounts are not consistent with the store’s observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as McClure Kwikway to have purchases like those included in this Attachment to the charge letter.

The FNS store visit report, which was completed in collaboration with and signed by the store manager, as well as the store visit photos show that McClure Kwikway offers a moderate stock of SNAP-eligible foods with no fresh or frozen unprocessed meats, poultry, or seafood, no fresh produce stock other than a few pre-made salads, a moderate variety and amount of frozen food stock, and a lack of an abundant depth and breadth of staple foods. In addition, the store had empty shelves. The store visit observations also show only a few expensive eligible foods in stock, some of which were in limited quantities, that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions. The Appellant did not provide any evidence, 5 U.S.C. § 552 (b)(7)(E), of continuously purchasing inventory throughout the review period to satisfy the large transactions.

5 U.S.C. § 552 (b)(7)(E).

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Based on the discussion above and in the absence of credible evidence for 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 letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the

evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which 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 not true. This burden has not been met.

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) 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, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

EBT Register Receipts

The Appellant submitted a copy of the charge letter Attachments as well as 59 itemized EBT register receipts. No specific contentions regarding the submission of these EBT receipts was provided by the Appellant.

A review of the submitted EBT receipts indicates that the legitimacy of the receipts is in question. For example:

5 U.S.C. § 552 (b)(7)(E).

These register receipts are suspicious, and it is likely that they are contrived in an effort to support the transactions noted in the charge letter. Therefore, they do not validate that they were legitimate, bona-fide transactions as the register receipts can simply be trafficking data under the guise of eligible food sales.

Corrective Action

The Appellant contends that the employee is no longer working at the Appellant. A new or updated POS system would help eliminate any confusion as to how to correctly separate SNAP-eligible items from ineligible items. Employee training on the knowledge and importance of SNAP will also be enforced. Plans to update and educate are currently being scheduled.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though

they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Customer Hardship

With regard to the Appellant's contentions that a SNAP disqualification would impose a hardship on area SNAP customers, 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

CIVIL MONEY PENALTY

As previously indicated, the March 29, 2022 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated March 16, 2022 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against McClure Kwikway is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

June 6, 2022