

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

Sarasota Marathon,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0225984

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 Sarasota Marathon (hereinafter “Sarasota Marathon” 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 Sarasota Marathon.

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 February 24, 2020, the Retailer Operations Division informed the Appellant that Sarasota Marathon 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 February 26, 2020.

In responses to the Retailer Operations Division of March 2, 2020 and March 3, 2020, the Appellant replied to the letter of charges citing credit extension and other various explanations for the transactions documented in the charge letter. As a result of the credit extension contention, the Retailer Operations Division sent a letter to the Appellant on March 9, 2020 noting that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f). A firm that commits such violations shall be disqualified from SNAP participation for a period of one year. Documentation was requested to support that food items were purchased on credit as noted in the March 3, 2020 response. The Appellant was informed that the requested documentation and any information, explanation, or evidence regarding the charges must be provided to the Retailer Operations Division within 10 calendar days of receipt of the March 9, 2020 credit letter. Per UPS confirmation of delivery, the Appellant received the credit letter on March 10, 2020. The Appellant subsequently provided an additional response to the letter of charges on March 16, 2020. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated April 20, 2020, informing the Appellant that Sarasota Marathon 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 29, 2020, the Appellant requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated May 5, 2020.

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 July 2019 through December 2019. 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 and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations.
- The Appellant has been trained on how to properly handle SNAP transactions.
- The Appellant is located in an area where the neighborhood relies heavily on SNAP benefits.
- Most of the Appellant's customers are local and shop frequently at the Appellant.
- There are only a couple of stores in the area that are authorized to accept SNAP benefits.
- The Appellant extends credit to SNAP customers who pay back the store when they receive their monthly SNAP benefit allotments.
- The Appellant was just trying to help local customers who were facing financial hardship.

- The Appellant has a credit log book where employees write down the customer's name and amount they purchase.
- The Appellant was unaware that credit extension is a SNAP program violation.
- The Appellant apologizes for this mistake as it always complies with the SNAP rules and will continue to do so in the future.
- Since learning that credit extension is a SNAP program violation, the Appellant has ceased this practice.
- Payments on credit accounts can result in frequent transactions.
- Household ****5601 is one of the Appellant's local regular customers who buys groceries on credit, pays the store back and frequently shops at the Appellant.
- Household ****3701 completed three transactions in a short timeframe because the customer paid the amount owed on credit and then made several additional transactions.
- The Appellant sells soda, water, juice, snacks, groceries, cold food, milk, cheese, bread, and many other eligible food items.
- The Appellant sells many items in bulk quantities as the store's prices are very competitive. As such, customers buy in large quantities.
- The Appellant has a deli kitchen and sells bulk frozen foods by the case such as chicken wings, fish, bacon, sausage, eggs, etc. Purchases of these bulk items can add up to as much as \$100.00 or more.
- This is why there are some large transactions noted in the charge letter Attachments.
- The transaction that occurred on October 4, 2019 by household ****0021 was charged \$242.00 but was supposed to be charged \$2.42. The Appellant has settled this issue with the customer and has given him/her store credit.
- The large transaction amounts are also due to the store's extension of credit to customers.
- A SNAP disqualification would impose a financial hardship on the Appellant.

In support of these contentions, the Appellant submitted for review four (4) pages from a hand-written credit ledger.

ANALYSIS AND FINDINGS

SNAP Authorization

FNS authorized Sarasota Marathon for participation in the SNAP on February 12, 2019. During the review period of July 2019 through December 2019, Sarasota Marathon 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.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 9, 2020 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 1,200 square feet in size with approximately 110 square feet of storage area outside of public view which stocked predominantly drinks and alcohol;
- Had storage coolers/freezers which predominantly stocked foods for hot and/or cold food preparation;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Did not have an optical scanner;
- 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 and on-line orders were not taken and delivery was not offered;
- The four most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Enfamil infant formula at \$6.99 per 13.0 ounces (3 units in stock); Jack Links jerky at \$5.99 per 3.25 ounces (3 units in stock); Niagara water at \$5.99 per 24-pack (9 units in stock); and various sodas at 5.99 per 15-pack (4 units in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock consisted of ice cream only;
- Had a kitchen and hot foods were sold;
- Did not have a deli area and deli meats and cheeses were not sold by the pound;
- Had a limited variety and amount of pre-packaged sandwiches in stock;
- Meat items included units of canned/potted meat, eggs, hot dogs, meat jerky, and canned fish;

- Dairy included milk, infant formula, and cheese;
- Fresh produce stock consisted of a few bananas;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, oats, flour, loaf bread, buns/rolls, 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, clothing, lottery tickets, automotive supplies, gift items/party goods/souvenirs, cell phone accessories, 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 16 sets of transactions (47 total transactions) that total \$1,969.46 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 13 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 the store is located in an area where the neighborhood relies heavily on SNAP benefits. Most of the Appellant’s customers are local and shop frequently at the Appellant.

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 bananas, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream.

The store visit report, which was completed in collaboration with and signed by the store manager/owner, and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Sarasota Marathon 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 offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores. There was only one small checkout counter with limited check-out counter space, one cash register and one EBT POS device for use in ringing-up customers, no shopping carts or hand-held baskets available to customers for transporting food within the store, and no optical scanners or 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 subsequent 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.

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

The Appellant contends that the store extends credit to SNAP customers who pay back the store when they receive their monthly SNAP benefit allotments. The Appellant was just trying to help local customers who were facing financial hardship. The Appellant has a credit log book where employees write down the customer's name and amount they purchase.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. 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.

In support of its credit extension contention, the Appellant submitted four (4) pages from a handwritten credit ledger. 5 U.S.C. § 552 (b)(7)(E).

The Retailer Operations Division evaluated the credit extension documentation provided and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that household ****5601 is one of the Appellant's local regular customers who buys groceries on credit, pays the store back and frequently shops at the Appellant. However, the record reflects that while this household shopped at the Appellant during the review period, it also shopped at larger, better stocked stores, including three supermarkets/super stores. For example, on December 15, 2019, this household made six transactions at the subject firm for a total of \$162.39. However, in between some of the transactions conducted at the Appellant, the household made three smaller transactions totaling \$31.14 at a larger, better stocked supermarket with more likely better prices than the Appellant.

5 U.S.C. § 552 (b)(7)(E).

It is not logical that this household would purchase items on credit at the Appellant when there were funds on the household's EBT card to continue to purchase eligible food items at other stores.

The Appellant contends that household ****3701 completed three transactions in a short timeframe because the customer paid the amount owed on credit and then made several additional transactions. The record indicates that during the review period this household made a total of 17 transactions at the Appellant spending a total of \$365.00. The household had access to and shopped at 2 convenience stores, 4 combination grocery/other stores, 1 bakery specialty, 5 supermarkets, and 3 super stores on 28 occasions. Out of these 28 occasions, there were 23 occasions in which the household made purchases at 8 larger, better stocked supermarkets/super stores. It is not logical that this household would purchase items on credit at the Appellant when there were

funds on the household's EBT card to continue to purchase eligible food items at other stores.

Both households ****5601 and ****3701, despite having access to better stocked stores, conducted multiple purchase transactions at the Appellant often within 24 hours of shopping at the larger stores where they conducted much smaller SNAP purchases. This strongly suggests that these households are not using the subject firm as their primary shopping source. As such, the transactions conducted by both households are more likely than not the result of trafficking in SNAP benefits.

Although the firm may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the charge letter are due to repayment on credit accounts.

While the Appellant contends that it did not know that the extension of credit to SNAP customers was a violation of the SNAP regulations, the firm, upon being authorized by FNS to participate in the SNAP, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

The Appellant contends that there are only a couple of stores in the area that are authorized to accept SNAP benefits. 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. However, during the review period there were 11 SNAP authorized retailers located within a 1.0 mile radius of Sarasota Marathon, including 1 medium grocery store, 2 small grocery stores, and 5 other convenience stores, that could meet the nutritional needs of SNAP customers. There were 46 SNAP authorized retailers located within a 2.0 mile radius, including 2 super stores, 6 supermarkets, and 3 medium grocery stores. Some of these authorized SNAP stores are larger than Sarasota Marathon 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 Sarasota Marathon 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 92 SNAP transactions, as large as \$242.00, that total \$4,764.52. These transactions were conducted by 45 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 Appellant contends that it sells many items in bulk quantities as the store's prices are very competitive. As such, customers buy in large quantities. The Appellant has a deli kitchen and sells bulk frozen foods by the case such as chicken wings, fish, bacon, sausage, eggs, etc. Purchases of these bulk items can add up to as much as \$100.00 or more.

However, 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 Sarasota Marathon 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/owner, as well as the store visit photos show that Sarasota Marathon offers a moderate stock of SNAP-eligible foods with no fresh or frozen meats, poultry, or seafood, no fresh produce stock other than a few bananas, no frozen food stock other than ice cream, and a lack of an abundant depth and breadth of staple foods. 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. **5**
U.S.C. § 552 (b)(7)(E).

No evidence was advanced to support the Appellant's claim that it offers items for similar prices as local supermarkets. As the Appellant is located in an area with larger SNAP authorized stores

(i.e., 2 super stores, 6 supermarkets, and 3 medium grocery stores within a 2.0 mile radius), it is unlikely the amount of savings accrued at the Appellant is comparable to the savings that come from purchasing lower cost items available at supermarkets and super stores. Larger stores usually are able to offer items at a lower price than smaller stores/convenience stores due to their ability to purchase foods from suppliers/vendors in larger amounts and at lower prices. As such, it is not practical that SNAP customers would choose to make large or multiple purchases at the Appellant when there is access to multiple larger area authorized stores with lower prices.

The Appellant contends that the transaction that occurred on October 4, 2019 by household ****0021 was charged \$242.00 but was supposed to be charged \$2.42. The Appellant has settled this issue with the customer and has given him/her store credit. While it is possible that this transaction was rung-up in error, the Appellant offered no evidence to support this claim. In addition, if the transaction was incorrectly rung-up, the customer should have been issued a refund on his/her EBT card as opposed to store credit.

With regard to the Appellant's credit extension contention in support of the transactions in this Attachment, as noted previously, the information provided by the Appellant is not sufficient to support that these questionable SNAP transactions are due to repayment of credit accounts by SNAP customers.

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, 5 U.S.C. § 552 (b)(7)(E). 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.

Corrective Acton

The Appellant contends that it apologizes for the credit extension mistake as it always complies with the SNAP rules and will continue to do so in the future. The Appellant has suspended credit extension to SNAP customers.

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 contention 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.

Financial Hardship

With regard to the Appellant's contention that a SNAP disqualification would impose a financial hardship on the firm, 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 possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

As previously indicated, the April 20, 2020 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 February 24, 2020 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 Sarasota Marathon 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

July 15, 2022