

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

State Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247792

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of State Food Mart (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against State Food Mart.

AUTHORITY

7 U.S.C. § 2023 and 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

State Food Mart was initially authorized to participate in SNAP on October 25, 2016. In a letter dated December 8, 2021, the Retailer Operations Division charged Appellant with trafficking, as defined in § 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of January 2021 and June 2021 and information obtained during a visit to the store by an FNS contractor on July 6, 2021. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10 days of receipt to explain

the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the trafficking charges, through counsel, on December 10, 2021 and December 15, 2021. In the response, Appellant did not deny the trafficking charges, but did claim that transactions by the same person in a short time period did not equate to trafficking as there is nothing in SNAP guidelines to stop customers from making purchases. Appellant also requested a CMP in lieu of permanent disqualification. Appellant did not submit any evidence in support of its request.

After considering Appellant's reply and further evaluating the evidence, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated December 28, 2021. This letter informed Appellant that the firm would be permanently disqualified from SNAP upon receipt of the letter, in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that Appellant was not eligible for a trafficking CMP in accordance with § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

On December 30, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. In supplemental correspondence emailed on January 27, 2022, Appellant, submitted additional information in support of the request for administrative review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 law in this matter is found 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.

7 U.S.C. § 2021(b)(3)(B) states, in part:

[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of [SNAP benefits] or trafficking in [SNAP benefits] 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption....

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 § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

7 CFR § 278.6(a) states, in part:

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e) (1) of this section.** [Emphasis added.]

7 CFR § 278.6(b)(2)(ii) states, in part:

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).

7 CFR § 278.6(b)(2)(iii) states:

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 a penalty.

7 CFR § 278.6(e)(1)(i) states, in part:

[FNS] shall...disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.2(f) states, in part:

SNAP benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in SNAP for a period of one year.

7 CFR § 278.6(i) states, in part:

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 § 284.1 Pandemic Electronic Benefits Transfer (P-EBT) states in part:

(a) Overview. Section 1101 of the Families First Coronavirus Response Act (FFCRA; Pub. L. 116-127), as amended, authorized supplemental allotments to certain households. These benefits shall be referred to as Pandemic Electronic Benefits Transfer (P-EBT) benefits This section establishes the retailer integrity regulations for P-EBT for retailers in any State as defined in Section 3(r) of the Food and Nutrition Act.

(b) Definitions. For this section:

(1) Trafficking means the activities described in the definition of trafficking at § 271.2 of this chapter when such activities involve P-EBT benefits.

(2) Firm's practice means the activities described in the definition of firm's practice at § 271.2 of this chapter when such activities involve P-EBT benefits.

(3) Involving P-EBT benefits or involve P-EBT benefits means activities involving PEBT benefits as well as supplemental nutrition assistance program (SNAP) benefits, or only P-EBT benefits.

(c) Participation of retail food stores and wholesale food concerns, and redemption of PEBT benefits. Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of coupons described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of coupons for eligible food at authorized firms, also apply to activities involving P-EBT benefits

(e) Penalties. For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve P-EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at § 278.6(e)(1)(i) of this chapter, for trafficking, as defined at § 284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at § 278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of regulations of this section

(6) Disqualify the firm for 1 year for credit account violations as described at §§ 278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve P-EBT benefits.... 5

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at § 278.6(j) of this chapter in an amount calculated using the described formula at § 278.6(j), which shall also include the relevant amount of P-EBT redemptions when calculating the average monthly benefit redemptions....

(g) Administrative and Judicial review. Firms aggrieved by administrative action under paragraphs (d), (e), and (f) of this section may request administrative review of the administrative action with FNS in accordance with part 279, subpart A, of this chapter. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

SUMMARY OF CHARGES

FNS charged State Food Mart with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for January 2021 through June 2021. The attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 2:** EBT transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

Appellant's contentions regarding this matter are summarized as follows:

- The firm was not involved in any violations because one card was used by all family members, some customers paid monthly, some customers bought bundles like Red Bull, Monster, Ensure, 30-pack soda, water. Appellant believes some charges had the same amount tripled in 30-40 seconds because the machine showed a communications error and the clerk charged the customer again.
- Most customers buy groceries for their entire household as would a customer at a grocery store.
- Each household card can be used numerous times throughout the day as there are numerous individuals in each large family and there are a significant number of unemployed customers that frequent the store.
- Appellant wishes to prove that he had a legitimate training program for employees and an effective compliance program to prevent SNAP violations in order to meet the eligibility requirements for a CMP under Section 278.6(e)(1).
- Appellant has been in business since 2016 and SNAP authorized since 2017, and during this time has been active in ensuring full compliance with his employees and their obligations to USDA/FNS.
- Appellant's training program included reviewing the FNS Handbook with each new employee and calling the USDA or store owner if the clerk had any questions.
- Appellant had a training policy in place using the SNAP Retailer Training Guide. All employees and store operators were trained and received a copy of the guide. The contents of the guide are discussed and reviewed with employees and partners of the business on a semi-annual basis and each employee is reminded to never engage in cashback for EBT purchases, to disallow purchases for a person who is not part of the household that the card belongs to, and to disallow sales on unqualified EBT items.
- Appellant has invested a significant amount of time in managing a fully functioning grocery store. Appellant runs a high traffic store and cannot deny customers from completing their transactions. Many customers occasionally require additional assistance and will ask if they can keep a tab open to pay as they receive funds on

their SNAP benefits card. Appellant allowed customers to take care of their families before making any payments to the store.

- Appellant's customers make purchases on a random basis. There is nothing in the guidelines to stop customers from making purchases and in fact, there are rules to protect the dignity of SNAP customers that essentially disqualify asking questions as to the need of purchasing items.
- In following SNAP guidelines and a proven compliance policy, petitioner shows no intentions in allowing such violations to happen again.

In support of these contentions, Appellant submitted three photographs of cash register reports and five photographs of store inventory.

The preceding represents a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any that have not been specifically listed here.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the December 8, 2021, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

Store Visit Report

In reaching a disqualification determination, the Retailer Operations Division considered information obtained from a store visit conducted by an FNS contractor on July 6, 2021, to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular

SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- The firm is a convenience store, approximately 1,200 square feet in size, with 75 square feet of storage outside of public view. The items in the store's storage area included non-staple foods and non-foods. The store had no storage coolers or freezers. Store personnel confirmed that no food was stored offsite.
- The store had one shopping cart but no shopping baskets for customers to use.
- The store had one cash register for food purchases and one EBT point-of-sale device.
- The store did not use optical scanners to process transactions.
- The checkout area consisted of a small and cluttered counter space where items could be placed for purchase.
- The store's staple food stock met SNAP program eligibility requirements; the food selection was typical of a convenience store. The store did not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- SNAP-eligible, non-staple, accessory food items available at the store included carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sold ineligible nonfood items, including lottery tickets, tobacco products, cleaning products, paper goods, and has ATM or money transfer services.
- The store sold hot coffee and had a table and chairs.
- The firm did not have a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- The store did not take telephone or online orders, nor did it offer delivery.
- The most expensive SNAP eligible food items for sale at the store included a 3.6-ounce package of Jack Link's jerky for \$7.99; a 12-ounce can of Libby's corn beef for \$6.99; a 96-ounce bottle of Ocean Spray juice for \$6.99; a 32-ounce bottle of Mazola corn oil for \$5.99; a 2 pound, 8.7-ounce box of Cheerios cereal for \$5.99; and a 16-ounce package of bacon for \$5.69. The store had limited units of most of these items for sale at the time of the store visit.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of canned and packaged goods, snack foods, single-serving food items and accessory food items. Given the available inventory, there was very little sign that the firm would likely have SNAP redemption patterns that differed significantly from those of similarly sized competitors, especially competitors that sell similar or identical food items.

SNAP Transaction Analysis

While SNAP households have no limit on the number of times they may use their SNAP card or how much eligible food they may purchase in SNAP transactions, government analyses have found that stores likely trafficking SNAP benefits have particular transaction patterns or characteristics that are inconsistent with the transaction patterns and characteristics of similarly situated stores. The Charge Letter Attachments specify the unusual transactions and transaction patterns found at Appellant's store, which are considered together with other available

information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 43 sets of transactions (102 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short time periods to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure.

The transactions in Charge Letter Attachment 1 included sets of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There were some highly suspicious transaction patterns in this attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Some of these transactions took place less than five seconds apart. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total 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 Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 444 large purchase SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As a point of reference, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E).

Since the store sold primarily low dollar value items, it would take a very large volume of items to reach some of these transaction amounts. Although Appellant now claims to sell bundles of beverages and provided undated photographs of these items, these beverages were not shown as available for sale at the time of the store visit. Appellant also provided three photographs of cash register reports, with each showing one large transaction on three separate dates during the review period. These reports do not identify the items sold, nor do they show that they are legitimate SNAP purchases. Evidence of just three transactions out of the 444 in this charge letter attachment is insufficient to establish the validity of Appellant's claims. Additionally, given that the store had only one shopping cart, no shopping baskets, and had limited counter space at checkout, the store is not conducive to large purchase transactions. Again, the store's inventory and characteristics do not support the frequency of large transactions reflected in this Charge Letter Attachment. There is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items.

In addition to the transactions in this attachment being unusually large, transaction totals recurred in the attachment an unusual number of times and these recurrent totals are clumped together primarily in the \$40 to \$50 dollar range. In large purchase transactions, where multiple items are being purchased, it is unusual for the same transaction total to naturally recur multiple times. Appellant's transactions are particularly odd since there were no recurrent transaction totals at all in the \$35 to \$40 range, but there were many recurrent transaction totals for higher dollar values. This can indicate that transaction totals are being contrived, which happens when stores traffick SNAP benefits. The table below shows the frequency of three or more recurrent SNAP redemption amounts during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Although Appellant claims repetitious amounts were due to communications error with the store EBT point-of-sale device, typically when this occurs, the store refunds repetitive charges back to the customer. None of the repetitive charges were refunded here.

Competitor Stores

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed 34 SNAP authorized retailers within a one-mile radius, including a supermarket and three medium grocery stores. This comparison demonstrates that households shopping at Appellant likely had access to larger stores that may have lower prices and better inventory. With these shopping options, it is unlikely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's convenience store, and that they would do so recurrently.

Comparison with Similarly Situated Convenience Stores

Given that there were a number of shopping options near Appellant, the Retailer Operations Division selected two convenience stores near Appellant that were SNAP authorized during the review period to compare to Appellant. Because the stores are close in proximity to Appellant, if the stores are similar in inventory and infrastructure to Appellant, then the sales patterns should be comparable.

The store visit report and photographs for the comparison stores show very similar inventory and inventory levels between Appellant and the comparison stores. However, Appellant's transaction patterns were significantly different from the other two stores during the review period. For example, Appellant had 43 sets of transactions that met the parameters of Charge Letter Attachment 1, while one of the comparison stores had two sets of transactions that met these parameters and the other had seven. Likewise, Appellant had 444 transactions that met the parameters of Charge Letter Attachment 2, while one comparison store had only 71 and the other had 147 transactions that met these parameters. While the Charge Letter Attachments identified Appellant's transaction patterns as significantly aberrant when compared against the averages for convenience stores, the Retailer Operations Division's analysis confirmed that Appellant's

transaction patterns were likewise strongly inconsistent with very similarly situated convenience stores.

Household Analysis

In addition to determining if households had access to other shopping options, the Retailer Operations Division conducted a household analysis to determine if households shopping at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of three households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. These examples 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The second and third households repeatedly conducted large transactions at Appellant within a day of shopping at large supermarkets or superstores. One of these households' address of record was over 2.5 miles from Appellant's store address; the household address was less than a mile from a superstore. The Retailer Operations Division's analysis demonstrated that households shopping at Appellant during the review period had access to larger stores and actually shopped in them regularly.

Credit Accounts

Appellant claims that irregular SNAP transaction patterns are due to the firm giving store credit to households needing assistance, and not due to trafficking. Appellant provided no documentation or evidence in support of this claim to the Retailer Operations Division or for this review.

The practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a lesser one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f). When a retailer claims that credit accounts are a reason for the 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 accounts to obtain a lesser one-year disqualification penalty instead of permanent disqualification for 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. Such proof should also correspond with the transactions identified in the charge letter. The explanation provided by the Appellant, without supporting evidence, falls far short of these expectations and is insufficient for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

Summary

This review finds that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical

characteristics and inventory and household shopping patterns, the case for trafficking is convincing.

On review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter were not caused by trafficking. In fact, the Appellant offered no reliable evidence to support its contentions regarding specific transactions listed in the charge letter. Given the totality of the record, this review finds the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant. Therefore, the Retailer Operations Division’s decision to impose a permanent disqualification against State Food Mart is sustained.

CIVIL MONEY PENALTY (CMP)

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. The criteria for a trafficking CMP in lieu of disqualification is defined under 7 CFR §278.6(i) which reads, *inter alia*:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm

The Retailer Operations Division found the firm was ineligible for a trafficking CMP in lieu of disqualification under 7 CFR § 278.6(i) because Appellant failed to submit, within the specified

timeframe, evidence of an effective compliance policy and program to prevent SNAP violations. This review agrees.

In reply to the charge letter and on administrative review, Appellant requests a CMP in lieu of permanent disqualification and claims to have implemented an effective compliance program to prevent SNAP violations. However, Appellant did not submit any evidence in support of its request. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i)

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for State Food Mart was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further support the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against State Food Mart, under the ownership of Mohammad A. Sarker, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 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.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

August 30, 2022