

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

Village Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248503

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 Village Store (“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 Village Store.

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

Village Store was initially authorized to participate in SNAP on November 24, 2003. In a letter dated October 22, 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 February 2021 and July 2021 and information obtained during a visit to the store by an FNS contractor on June 21, 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).

On November 2, 2021, Appellant, through counsel, requested an extension of time to respond to the charge letter. In a November 3, 2021, letter, the Retailer Operations Division informed Appellant and their counsel that an extension to respond to the charge letter was granted through November 12, 2021. The letter provided that the time to request a civil money penalty in lieu of permanent disqualification could not be extended. Appellant never submitted a response to the charge letter, nor did Appellant request a civil money penalty in lieu of permanent disqualification.

After further evaluating the evidence, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated December 1, 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.

In a letter dated November 4, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. Appellant subsequently obtained new counsel who was granted an extension of time to submit additional information in support of the request for review. In supplemental correspondence dated January 18, 2022, Appellant, through counsel, 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 § 278.6(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 Village Store 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 February 2021 through July

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 transactions are explained by SNAP household shopping patterns at the store, which have shifted due to extra SNAP benefits being available during the pandemic.
- The store is located inside a large public housing high-rise community in downtown Worcester, Massachusetts and sells a large quantity of food to its customers. The vast majority of the 1,400 community residents likely qualify for SNAP benefits. The area of the town is low income and low access, with the closest supermarket being one mile away and located in an unsafe part of town.
- The store has been in continuous business for 42 years and has been SNAP authorized for 20 years without any allegations of program violations. Appellant denies the trafficking charges.
- The store has an extremely loyal customer base that primarily consists of the public housing community and the surrounding neighborhood.
- The store is best described a neighborhood grocery store, selling a wide variety of SNAP eligible food products, including staple food items, drinks, deli items, and accessory food items. Its offerings are far greater than typical for a corner store, which causes higher than expected SNAP redemptions.
- The store benefitted from significantly increased sales during the pandemic, which as permanently changed customer shopping behavior.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
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- Increases in EBT sales was due to a combination of factors, including access to P-EBT benefits, an increase in SNAP benefits, remote school learning, and students being out of school for summer break. The increase in sales was due to an EBT customers base that had access to more SNAP benefits when they were suddenly home all the time.
- The percentage of nontax, or food sales, has remained constant when compared to total gross sales, which is evidence that this is legitimate purchase behavior.
- The store has tailored its offerings to be EBT-eligible. Also, because most customers live walking distance to the store, they often make multiple legitimate food purchases in small time frames because they do not have cars to transport large grocery purchases home.

- Most of the store's loyal customers have multiple small children. Parents will send their children back to the store to buy additional items. This became more common during pandemic months, when children were home all the time.
- Customer declarations attest to large purchases being normal due to the store being the closest SNAP authorized store, the selection of foods, and the increase in SNAP benefits.
- The average flagged transaction was only 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given the prices for items offered at the store, transactions over \$50 are likely legitimate purchases of food.
- Multiple transaction in a short time frame can be explained by customers shopping at the store daily given the proximity of their homes and lack of access to a car. Customers without transportation return to the store multiple times a day in order to break up the amount of items they must carry home in a single trip. Further, children are often sent to make additional purchases. Customer declarations explain that they have to break up purchases into multiple return trips.
- Although Appellant does not have a video surveillance system. In another case, video from a store showed children coming in and out of the store to purchase snacks and sodas, as well as parents making normal grocery purchases in short time windows.
- Courts have held that suspicious EBT redemption data is not sufficient on its own to justify a trafficking determination without a finding that the data is abnormal as compared to like SNAP retailers or where other compelling circumstances, or both.
- There is insufficient evidence to show that Appellant violated SNAP regulations by trafficking.

In support of its contentions, Appellant provided the following documentation as evidence:

- Approximately 44 customer declarations attesting to the types of items purchased, the amounts and frequency of purchases, the availability of transportation, and increases in SNAP benefits during the pandemic.
- Approximately 3,297 inventory purchase invoices from vendors.
- A spreadsheet analysis of monthly inventory purchases and nontax sales.

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 October 22, 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 June 21, 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 small grocery store, approximately 900 square feet in size, with 450 square feet of storage outside of public view. The store had storage coolers or freezers.
- The store had no shopping carts and only five shopping baskets for customers to use.
- The store had one cash register for food purchases and one EBT point-of-sale device.
- The firm used optical scanners to process transactions.
- The checkout area consisted of a small 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 small grocery store. The store did not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables. The store did sell hot foods such as appetizers, chicken, seafood, pizza, submarine sandwiches, and breakfast sandwiches. The store also sold cold prepared foods such as salads, cold submarine sandwiches, and bagels with cream cheese.
- 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, automobile products, health and beauty aids, paper goods, cleaning products, housewares, gift items or party goods and had ATM or money transfer services.
- 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 items in the store's storage area included additional staple foods, non-staple foods, foods for hot and/or cold preparation, and nonfoods.
- The store did take telephone or online orders, but it did not offer delivery.
- The most expensive SNAP eligible food items for sale at the store included a 10-pound bag of Camilla brand white rice for \$9.99; a 1-pound package of frozen stew beef for \$8.99; a 11-ounce can of Folgers brand coffee for \$6.99; a 16-ounce can of Betis brand olive oil for \$6.99; a 5-pound bag of Iberia brand jasmine rice for \$6.49; and a 5-pound bag of Goya white rice for \$6.49. Also visible in the store visit photographs are cans of Similac brand baby formula. A price list indicates baby formula prices ranged from \$5.49 through \$21.99.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, single-serving beverages, frozen vegetables, and accessory food items. The store did have a small display of fresh vegetables and a limited assortment of deli meats and frozen meats, as well as a small assortment of bread 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 other small grocery stores.

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. 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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Many of the transactions within sets were close together, taking place within minutes or hours despite each being a large purchase that would likely last for a significant period of time. A household conducted transactions at this small grocery store four times in a short time period, with several households conducting up to three transactions in a single day. Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a small grocery 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 superstore. 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. The store was not conducive to large purchase transactions as it had no shopping carts, only five shopping baskets, and had limited counter space at checkout. The firm did not have 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 that would attract SNAP customers. There is nothing notable about the store's layout, infrastructure, or inventory that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items. Finally, Appellant failed to provide convincing evidence to establish the legitimacy of these large transactions, such as itemized cash register receipts. Given the factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

Comparison with Similarly Situated Small Grocery Stores

The Retailer Operations Division selected three small grocery stores with similar stock located near Appellant that were SNAP authorized during the review period to compare to Appellant. In looking at the number of transactions that hit the parameters of Charge Letter Attachments 1 and 2, Appellant had more transactions meeting these parameters than the other three stores combined. For example, the other three stores, cumulatively, had 26 sets of transactions that met the parameters of Charge Letter Attachment 1, while Appellant had 70 sets. The comparison stores, cumulatively, had 524 transactions that met the parameters of Charge Letter Attachment 2, while Appellant had 674. Appellant's transactions were highly irregular when compared to other nearby small grocery stores.

As shown in the chart below, during the six-month review period, Appellant also had a very high total purchase count and total purchase dollar volume when compared to the average of small grocery stores across Massachusetts and Worcester County, as well as compared to the three similarly situated small grocery stores. Appellant's contentions failed to sufficiently explain why Appellant's sales would differ so significantly from other similar small grocery stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Household Analysis

The Retailer Operations Division conducted a household analysis to determine if households conducting suspicious transactions at Appellant utilized larger stores during the review period. If

households regularly shopped at larger stores, it is unlikely that transportation or other access issues were limiting factors forcing households to conduct large or repeat transactions at Appellant. Additionally, because larger stores usually have lower prices and better inventory, households would be less likely to conduct large or repeat purchase transactions at Appellant, a small grocery store.

The analysis included examples of three households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. Two of the households lived in the housing community where Appellant is located, while the third household lived three miles away.

During the review period, the household that lived three miles away from Appellant often shopped at superstores closer to home. However, this household recurrently conducted very large transactions or recurrent transactions at Appellant even when shopping at a superstore on the same day. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that this household lived closer to superstores and shopped at them, it is suspect that the household would conduct its largest SNAP transactions at a small grocery store several miles from home.

The two households that lived in the housing community where Appellant is located also appeared to have access to transportation as they both regularly shopped at supermarkets or superstores during the review period. The first household shopped at these larger store types 84 times during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given this household's regular access to larger store types, it is unlikely that the household would conduct large transactions at Appellant. The second household also regularly shopped at supermarkets and superstores, conducting transactions at these larger store types 16 times during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While households living in close proximity of Appellant can be more likely to conduct transactions at the store, it is less likely that these households will conduct large transactions at Appellant, a small grocery, store when they have regular access to larger stores with better prices and inventory. The shopping patterns of the households identified by the Retailer Operations Division show that the households shopping at Appellant had access to larger stores and frequently shopped at them.

Store Location and the COVID-19 Pandemic

Appellant contends that the transaction patterns are explained by the store's location in a public housing high-rise community where the majority of residents qualify for SNAP benefits. Appellant says there are few shopping options nearby and residents have limited access to transportation. Appellant says that the increase in SNAP redemptions were due changes in household shopping behavior caused by children being home due to virtual learning and increases in SNAP benefits due to pandemic relief efforts. In support of these contentions, Appellant submitted inventory purchase invoices for November 2020 through October 2021 and an analysis of inventory purchases as well as food sales for this time period.

Appellant's contentions are compelling at first glance. However, a store's transaction data is compared against other SNAP authorized stores who are experiencing the same or similar impacts of the changes mentioned in Appellant's contentions. Therefore, if a store's transaction data or transaction patterns are deemed irregular, it is because they are irregular as compared to

other SNAP authorized stores experiencing the same or similar changes. Appellant's most compelling argument is the one having to do with its location in a public high-rise community. If children are home and SNAP benefits have increased, it may be likely that shopping patterns have changed more significantly for Appellant as compared to other similarly situated stores. However, the evidence provided by Appellant, as well as SNAP redemption data, reveal just how irregular Appellant's transactions were during the review period.

The Retailer Operations Division analyzed the inventory purchase invoices submitted by Appellant. Given the volume of purchase invoices submitted on administrative review, the Retailer Operations reviewed a sample of invoices for February 2021 and March 2021. To the extent possible, the Retailer Operations Division separated out the non-food items purchased to determine the amount of eligible foods purchased in the two months. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E). In other words, inventory purchases were insufficient to cover SNAP redemptions, much less redemptions using other forms of tender. To note, the Retailer Operations Division credited Appellant with higher amounts of eligible food purchases than Appellant's own analysis showed for February 2021 and March 2021.

Additionally, changes to shopping habits due to remote learning and increases in SNAP benefits, like the 15 percent increase in benefits from January 2021 to June 2021 that Appellant references, do not explain the exponential increases in Appellant's SNAP redemptions. Appellant claims that it was able to increase food revenue by at least 30 percent from before the pandemic to 2021 due to these changes. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Students in Worcester County were exclusively in remote learning from September 15, 2020, through March 15, 2021, with all students being offered hybrid learning by the end of March 2021. Given that students were in remote learning for months prior to the review period, this does not explain the disproportionately large increase in Appellant's SNAP redemptions during the review period. While an increase in SNAP redemptions during the review period is likely, an exponential increase in SNAP redemptions is very unlikely. Appellant has not provided sufficient evidence to explain the large increase in its SNAP redemptions.

Case Law

With regard to the case law cited by the Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

Customer Affidavits

Appellant submitted 44 customer affidavits to support its contentions. In these affidavits, customers attested to the types of items purchased, the amounts and frequency of purchases, the availability of transportation, and increases in SNAP benefits during the pandemic.

Although customer affidavits attested to these households frequenting Appellant due to transportation challenges, analyzed shopping patterns show that households shopping at Appellant, in fact, also shopped at larger, better stocked, and more competitively priced grocery stores, often on the same day. Additionally, the Retailer Operations Division conducted a search in the State administrative terminal using the names and address in these affidavits. The affidavits were a fill in the blank template form, and nine of these were typed and had no signature, so these were omitted from the search. Of the remaining 35 affidavits, one household could not be located with the information provided, while 16 households did not shop at Appellant during the review period. The remaining households had a total of 13 transactions that were listed on Charge Letter Attachment 2, and none from Charge Letter Attachment 1. These anomalies raise doubts regarding the applicability of these household affidavits. Regardless customer affidavits are often unreliable because the persons writing them often given inaccurate information that does not provide depict their actual shopping behavior. The other evidence in this case supporting trafficking is more persuasive than the customer declarations provided.

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 little evidence supportive of 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 Village Store is sustained.

CIVIL MONEY PENALTY (CMP)

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking civil money penalty in lieu of permanent disqualification under 7 CFR §278.6(i). The letter informed Appellant that it would need to both make the request and provide 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. Any evidence submitted by Appellant would have to meet the regulatory criteria for a trafficking civil money penalty, as provided in 7 CFR §278.6(i).

Appellant did not timely request consideration for a trafficking civil money penalty, nor has Appellant submitted evidence that meets the regulatory criteria for the civil money penalty.

Therefore, this review agrees with the Retailer Operations Division's determination that Appellant is ineligible for a trafficking civil money penalty in lieu of disqualification.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Village Store 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, this review agrees with the Retailer Operations Division to impose a permanent disqualification against Village Store, under the ownership of Jack Solomon and Rocio C. Solomon, 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

June 17, 2022