

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

Wr Grocery Store,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0245412

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Wr Grocery Store (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on January 23, 2020.

AUTHORITY

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

CASE CHRONOLOGY

By letter dated May 6, 2021, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in November 2020 through February 2021. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the

Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant failed to respond to the charges and did not request a CMP or submit any documentation in support of one. The Office of Retailer Operations and Compliance notified Appellant by letter dated May 26, 2021, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter postmarked June 9, 2021, Appellant appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which

demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

7 CFR §278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the four month period of November 2020 through February 2021. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The owner is a naturalized citizen with a limited understanding of American law and didn’t realize he was in violation of trafficking and regulatory laws;
- The multiple transactions are because the customer base is 98 percent Haitian/Creole who cannot read or write English and have no idea how SNAP EBT works. Many ask the owner for the balance left on their cards and when they receive his answer, may go back and buy more groceries. He would swipe their cards for the amounts of the additional items not knowing it was illegal to do so;
- The large EBT transactions are because the owner purchases merchandise in bulk such as 50-100 pound bags of rice and beans which customers buy for \$27.00-\$120.00 depending on the product. He also sells food and beverages by the case which could quickly add up to the amounts in Attachment 2. As shown by the attached photos it is possible for a transaction to add-up to \$100.00 or higher; and,
- Please advise the owner what he needs to do to clear-up this matter.

Appellant submitted three undated photos in support of these contentions.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of evidence for the legitimacy of such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS initially authorized the firm on June 15, 2018. The record indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during a March 2, 2021, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a very small and crowded small grocery store offering a minimal quantity and variety of staple foods and offering no distinctive services.
- The store primarily stocked a variety of canned and packaged Haitian foods as well as traditional American brands.
- The store visit report and photos showed no shopping carts and only one small handheld baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, or other sales were evident that would explain the unusual transactions. The store did offer a very limited quantity and variety of bulk items such as 20 and 50 pound bags of rice and 100 pound bags of black beans. Bottled water was also available by the case.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat packages, fish specials, or fruit and vegetable boxes for sale.
- There was one extremely small checkout area that consisted of the top of a three-drawer cabinet with almost the entire top covered by a wood/cardboard partition leaving virtually no room for customers to place their purchases. The extremely small checkout area would make it problematic to process large orders. The checkout area had one cash register, one POS terminal, and no optical scanner as confirmed by the store clerk.

- The firm had a two small chest freezers containing a minimal amount of frozen meat, poultry, and fish and a refrigerator freezer containing frozen vegetables.
- The firm had no fresh unprocessed meat, minimal amounts of frozen unprocessed meat, no fresh unprocessed seafood, minimal amounts of frozen unprocessed seafood, an extremely limited quantity and variety of processed meats and seafood (canned fish and three packages of hot dogs), no bacon, no sausages, no deli meats, no packaged lunch meats, no jerky, no frozen dinners, no frozen entrees, seven cartons of eggs, a moderate selection of fresh fruit and vegetables, a very limited selection of frozen fruit and vegetables, bags of black beans, dried vegetables, packaged nuts, bottled spaghetti sauce, canned tomato paste, 100 percent fruit and vegetable juices, packaged fruit cups, soups, a minimal quantity and variety of canned and packaged staple food items, no deli cheese, no packaged cheese, no single serving cheese, no yogurt, no single serving yogurt, no single serving yogurt drinks, butter spread, margarine (vegetable oil spread), no sour cream, no fresh milk, no single serving fresh milk, no goat milk, no buttermilk, canned milk, no half & half, coconut milk, no soy milk, no Lactaid milk, powdered (dried) milk, no single serving milk drinks, no cottage cheese, no cream cheese, fresh bread, no frozen bread, rolls, no tortillas, no pitas, no tostadas, corn meal, no AP flour, no multigrain flour, no corn flour, no sugar, bags of rice, bags of cracked Bulgur wheat, cold cereal, no single serving cold cereal, hot cereal, single serving Ramen noodle soup, no canned pasta, no single serving pasta, dry pasta, no dry noodles, no pancake mix, no baking mixes, no mac&cheese, no single serving mac&cheese, no cold ready-to-eat sandwiches, no frozen heat and eat single serving foods, cooking oil, coffee, no tea, no cocoa, no baby cereal, no baby foods, no infant formula, and few expensive staple food items.
- Ineligible items included: household products, paper products, health and beauty items, gloves, and hats while accessory foods included: candy, snacks, baked goods, cooking oil, spices, condiments, coffee, and un/carbonated drinks.
- The firm's hours of operation were open 24/7 as confirmed by the clerk.
- There was virtually no signage in the store. Many food labels were in English as well as in other languages. There were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- No food items were individually priced and there was no signage indicating prices. The FNS store visit report, completed in conjunction with the store clerk, showed that most food prices end in .x9 cents. A price ending in .x9 cents is a common pricing structure for smaller stores. The FNS store visit report listed the six most expensive food items costing more than \$5.00 for sale in the store as being: two 100 pound bags of black beans priced at \$95.00, four 50 pound bags of rice priced at \$56.00, four 20 pound bags of rice priced at \$32.00, more than 10 one gallon containers of vegetable oil priced at \$8.50, seven 15 ounce cans of tomato paste priced at \$8.00, and more than 10 cases of bottled water priced at \$8.00. This listing of the most expensive items was provided by the store clerk during the store visit.
- The firm was not a WIC vendor. Most SNAP households with infants or small children are WIC participants and therefore would be purchasing baby foods, formula, and other WIC products using WIC vouchers, not SNAP EBT benefits, at WIC vendors.

Multiple transactions in unusually short time frames

This Attachment documents 127 individual transactions in 57 sets of two or more transactions conducted by 40 different households in a short period of time. Individual transaction amounts range from \$20.18 to \$215.59 with 89 transactions equaling or exceeding \$50.00 and 57 transactions for \$100.00 or more. There are an unusually high number of transactions ending in the same cents value of .25 cents, .50 cents, and .75 cents accounting for 43.3 percent or nearly one out of every two transactions listed in this Attachment. The high percentage of same cents transactions is irregular and suspicious for this type of store. Appellant offered no explanations for this repeating same cents value and the store visit photos revealed no signs posted to indicate special food packages, bundles, bulk items, case sales, or other sales that would explain the unusual number of transactions ending in this same cents value. When such repetitive patterns are unsupported by special pricing structures, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking. Per the store cashier during the FNS store visit, the firm did not offer a special pricing strategy that would routinely result in these repeating ending cents values. This is very unusual and is a strong indicator of trafficking in SNAP benefits.

There are transaction set totals are as high as \$478.92, \$476.27, \$342.75, \$340.62, \$340.34, \$319.60, \$312.24, \$307.57, \$289.00, \$279.40, \$263.77, \$260.01, \$257.22, \$250.26, \$240.62, \$240.29, \$236.53, \$233.89, \$232.50, \$228.41, \$228.00, \$215.50, \$212.22, \$210.41, \$206.51, \$204.90, \$204.75, \$204.29, \$204.15, \$204.04, \$204.00, \$202.37, \$200.75, \$200.38, \$200.27, \$200.16, \$180.00, \$172.50, \$167.82, \$160.75, \$143.25, and \$142.60 to list some of the larger totals. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 29 of the 57 sets. The span of time for transaction sets ranges from 29 seconds to more than 47 hours with five of the 57 sets occurring in 80 seconds or less and with 37 sets occurring more than 10 minutes apart; 20 sets occurred over consecutive days. One transaction set is comprised of five individual transactions, one set of four transactions, and eight of three transactions while the remaining 47 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions are because the customer base is 98 percent Haitian/Creole who cannot read or write English and have no idea how SNAP EBT works. Many ask the owner for the balance left on their cards and when they receive his answer, may go back and buy more groceries. He would swipe their cards for the amounts of the additional items not knowing it was illegal to do so.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small ethnic grocery store's

stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, of household members/friends shopping together and making separate purchases, of a household dividing its purchases, or of households making a separate purchase to check their balance followed by another transaction as 37 of the 57 transaction sets occur more than 10 minutes apart with 20 sets occurring over consecutive days. The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.18 with 47 of the 57 sets having subsequent transactions of \$30.72 to \$215.59 and 22 sets with subsequent transactions exceeding \$100.00, far more than the cost of a forgotten item or two. Appellant offers no explanation as to why households would conduct up to five sizeable transactions at a minimally stocked small ethnic grocery store within a short period of time when they are also regularly shopping at other comparably sized or larger retail food stores offering greater quantities and varieties of many of the same or similar products and that includes at least one comparably stocked Haitian/Creole ethnic grocer. The presence and proximity of these larger stores, that include several medium grocery stores and two supermarkets, make it unlikely that many or any SNAP recipients would consider the Appellant firm to be their primary source for groceries.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total \$75.25 or more when the comparable average small grocery store SNAP transaction amount in Palm Beach County during the review period was \$20.90. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores, including ethnic stores offering similar foods, further supporting that trafficking was occurring at the Appellant firm during the review period.

The Appellant firm processed five transaction sets, all for amounts in excess of \$200.00, in less than 80 seconds with one set occurring in only 29 seconds, markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. Additionally, the firm has an exceptionally small checkout area, very narrow aisles, and no shopping carts to transport the large numbers of items required for these transactions. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given the facilities at the firm. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

The Office of Retailer Operations and Compliance's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of comparably sized or larger ethnic and non-ethnic food stores

located nearby and at a distance from Appellant's location. Their analysis also showed numerous households that shopped at the Appellant firm and at a super store, supermarket, or larger grocery on the same day or within 24-72 hours and inexplicably spent more at Appellant's small ethnic grocery store than they did at the larger stores. Appellant failed to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores that stocked many equivalent products would conduct multiple purchases often totaling to comparable or higher dollar amounts at a minimally stocked small ethnic grocery store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at super stores, supermarkets, and larger grocers. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the many larger stores they were already regularly shopping at for less money and therefore the more plausible explanation is that these households were trafficking SNAP benefits at the Appellant firm.

For example, a household received its monthly SNAP allotment and spent \$37.98 and \$32.13 at a super store and a supermarket located 1.22 and 0.54 miles away, respectively. Over the next two days this household spent \$118.50 and \$118.03 at the Appellant firm totaling \$236.53 and also \$144.43 at the nearby supermarket. On the fourth day the household spent \$15.05 at the Appellant firm and on the fifth day spent \$160.88 at a different supermarket. On the sixth and seventh days the household conducted three transactions (\$157.25, \$150.32, and \$12.02) totaling \$319.59. In summary, over a seven day period, this household spent \$375.42 in four purchases at a super store and two different supermarkets while spending \$571.17 at the Appellant firm. This same unusual shopping pattern occurred throughout the review period. Appellant offered no explanation as to why a household with unfettered access to transportation as evidenced by its shopping at five other stores (one super store, two supermarkets, and two combination grocery stores) located from 0.54 to 1.22 miles from Appellant's location, would spend so much of its limited SNAP benefits at Appellant's minimally stocked store when the larger stores would have offered a much greater quantity and variety of staple foods at better prices. While the Appellant firm did have four 50 pound bags of rice priced at \$56.00 and two 100 pound bags of black beans priced at \$95.00 during the FNS store visit, a household would not be making multiple purchases of bulk rice and beans in these quantities on a daily or weekly basis. The supermarkets and super store where this household conducted 37 transactions during the four month review period do offer many of the same or similar products as sold at the Appellant firm and likely at lower prices.

Another household conducted three transactions at the Appellant firm (\$0.00 balance inquiry, \$114.50, and \$113.50) totaling \$228.00 with the two purchases occurring 29 seconds apart. The next day this household spent \$101.60 at a super store located 1.22 miles from Appellant's location and then conducted three transactions (\$4.00, \$5.00, and \$12.00) totaling \$21.00 at a Haitian/Creole small grocery store located 0.11 miles away that carried comparable food stock. It is unusual that in a period of approximately 23 hours this household spent \$443.56 at the Appellant firm, \$101.60 at a nearby super store, and \$21.00 at a comparably sized and stocked Haitian/Creole grocery store. The following month this household spent \$43.61 at a nearby supermarket and the next day spent \$21.00 at the same

Haitian/Creole grocery store. Two days later it conducted two transactions (\$117.25 and \$26.00) at the Appellant firm totaling \$143.25 over 21 minutes and one hour later spent \$173.21 at a nearby super store. During the review period, this household shopped nine times at the Appellant firm, 10 times at the other Haitian/Creole store, and 25 times at super stores, supermarkets, and a large grocery store.

As previously stated, the Appellant firm offered a minimal stock of canned and packaged Haitian foods as well as traditional American brands. While the firm did have some bulk products such as 50 pound bags of rice and 100 pound bags of black beans, these items were in very limited quantities. Many other products stocked at the Appellant firm such as smaller sized packages of rice and beans, canned/package foods, meats, fresh and frozen fruits and vegetables, canned coconut milk, hot dogs, eggs, pasta, soups, cereals, condiments, candy, snacks, baked goods, beverages, etc. would be readily available in greater quantities and varieties for less money at any of the super stores and supermarkets located nearby.

It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super store, supermarkets, or the other ethnic grocery store the households in this Attachment were regularly shopping at and these stores would also likely have significantly lower food prices, yet these households continued to spend large dollar amounts at a small ethnic grocery with a minimal stock of staple foods. The more plausible explanation is that these households were trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking. Appellant has offered no legitimate reason why the households in this Attachment would spend so much of their SNAP allotments at a minimally stocked small grocery when they clearly had access to and frequently shopped at nearby and distant super stores, supermarkets, and other ethnic grocers offering the same or similar foods.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 356 individual EBT transactions ranging from \$100.00 to \$249.75 with 51 transactions for \$150.00 or more and three transactions exceeding \$200.00. The substantial number of high dollar transactions is uncharacteristic for a small ethnic grocery store offering a minimal stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$20.90 for this store type in Palm Beach County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line super stores, supermarkets, and other ethnic grocery stores that offer a comparable or greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar value transactions remain

questionable when considering the proximity of the other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is minimal, often on the same day, or within 24-72 hours of purchases at larger food stores.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Palm Beach County small grocery stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 215.71 percent larger than Palm Beach County small grocery stores and its average SNAP transaction count is 209.89 percent larger while its average SNAP transaction amount is only 1.91 percent larger. The extremely high transaction dollar volume and transaction count combined with a normal average transaction amount is indicative of the Appellant firm dividing larger trafficking transactions into smaller transactions in an attempt to avoid detection. A comparison of Appellant's SNAP redemptions to that of nearby like type ethnic grocers that had redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous one do not represent legitimate food purchases nor are they typical for the Haitian/Creole community. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in Palm Beach County. A comparison of Appellant's redemption data to the average for County small grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume is significantly higher than that of like type stores in all ranges up to the \$240.00-\$249.99 range at which point transactions stop. It is unusual that Palm Beach County small grocery stores began averaging less than one transaction in each range after the \$190.00-\$199.99 range while the Appellant firm has transactions up to the \$240.00-\$249.99 range, more than 25 percent greater than that of like type County stores. The Appellant firm also has unusual spikes in the number and dollar volume of transactions in the \$90.00-\$139.99 ranges and the \$180.00-\$199.99 ranges over the same period. For example, the Appellant firm has 25 transactions totaling more than \$3,100.00 in the \$120.00-\$129.99 range compared to an average of 3.53 transactions totaling less than \$450.00 for like type County stores. This transaction pattern and the unusual spikes in both transaction numbers and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Appellant firm's SNAP data was also compared to the nearby small Haitian/Creole grocery stores with the result being that the Appellant firm had significantly more transactions in all ranges. The Office of Retailer Operations and Compliance determined there was no credible reason for the firm to have transactions at these dollar levels given the minimal stock of staple/ethnic foods and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the large EBT transactions are because the owner purchases merchandise in

bulk such as 50-100 pound bags of rice and beans which customers buy for \$27.00-\$120.00 depending on the product. He also sells food and beverages by the case which could quickly add up to the amounts in Attachment 2. As shown by the attached photos it is possible for a transaction to add-up to \$100.00 or higher.

Appellant's claim that the charge letter transactions are the result of customers buying large quantities of items such as rice and beans in bulk has been refuted as previously discussed since the firm stocks a very limited inventory of these items. While the FNS store visit did show cases of some products, no proof that they are sold by the case, with the exception of bottled water, was provided. The store visit photos show no signage advertising case sales and many of the cases are in out of the way locations. Since cased items are being sold individually supports that the cases are nothing more than back-up inventory. This is further supported by the fact that only cases of bottled water were listed by the store clerk as being among the most expensive items sold at the store.

Appellant submitted three undated photos showing close-ups of what appears to be more than a dozen large bags of rice and beans. These photos do not match the photos taken by the FNS contractor during the March 2, 2021, store visit as they show substantially more product than what was available for sale during the store visit. A review of the FNS photos from the June 10, 2018, store visit also do not show this quantity of product. This suggests that the owner deliberately staged the photos in an attempt to show that the store carried more stock that could be used to explain the charge letter transactions thereby avoiding a permanent disqualification. Accordingly, these three photos are found to have no evidentiary value.

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

Information obtained during the March 2, 2021, FNS store visit on shows that the Appellant firm offers a minimal quantity and variety of SNAP eligible staple food items, many accessory foods, and several ineligible items. The fact that household products, paper products, health and beauty items, gloves, and hats are not eligible for purchase with SNAP benefits also provides no justification for the large transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully stocked stores that would offer a greater variety of foods, including ethnic specialty foods, at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the

period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months. The firm also has an extremely small checkout area and no shopping carts thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a minimal stock of staple food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

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

Other Contentions

The purpose of this review is to either validate or to invalidate the earlier decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The ownership and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP

regulations at 278.6(e)(1) clearly state that, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. SNAP regulations at 7 CFR § 278.6(a) clearly state that “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Office of Retailer Operations and Compliance staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Office of Retailer Operations and Compliance determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Office of Retailer Operations and Compliance determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not request or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i) within the specified timeframe. Based on the above, the Office of Retailer Operations and Compliance decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Office of Retailer Operations and Compliance presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Office of Retailer Operations and Compliance properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

May 13, 2022