

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

Xpress Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0216571

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 Xpress Stop (“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 Xpress Stop.

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

Xpress Stop was initially authorized to participate in SNAP on June 17, 2011. In a letter dated April 16, 2019, 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 June 2018 and December 2018 and information obtained during a visit to the store by an FNS contractor on March 3, 2019. 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).

In response to the charge letter, on April 23, 2019, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). The FOIA Office responded to Appellant's FOIA request on May 22, 2019. Counsel then appealed the FNS FOIA response by letter dated August 20, 2019. The FOIA office issued its response to the FOIA appeal on February 17, 2021.

Appellant, through counsel, responded to the trafficking charges on March 1, 2021 and March 8, 2021. The Appellant denied that the store engaged in trafficking. Among other contentions, the Appellant attempted to explain the irregular transaction patterns as the statistical results of the store's normal business operations and circumstances, local demographics, particular shopping habits of the store's clientele, and the store's categorization as a convenience store. To support these explanations, the Appellant submitted customer affidavits, purchase invoices, and studies about SNAP benefit redemption patterns and grocery shopping trends. The Appellant also requested a CMP in lieu of a permanent disqualification.

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 November 24, 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 November 30, 2021, letter, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. On December 21, 2021, 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.

SUMMARY OF CHARGES

FNS charged Xpress Stop 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 June 2018 through December 2018. 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:

- Because Appellant firm is located in an economically depressed area with a concentration of SNAP participants, the store has more transactions and higher revenue.
- There are only five SNAP retailers in the area, which is residential.
- The transactions are explained by SNAP household shopping patterns.
- The store visit inspector missed a number of higher priced items and food items that are sold prior to cooking.
- The disqualification is due to confirmation bias as ambiguous or contradictory evidence has been disregarded or interpreted in a way that unreasonably favors the Department's hypothesis that trafficking occurred at the store.
- When relevant factors are disregarded or devalued, like previous negative RIB investigations, the statistical analysis becomes inherently flawed.
- The Department bears the burden of proof, not the retailer, at this stage of the proceedings.
- Prior administrative review cases discuss precedent that should be considered in this case.
- Studies show that SNAP households have transportation challenges and particular shopping habits, such as shopping at gas stations, convenience stores, and mid-size grocers a majority of the time. SNAP household composition and location can impact shopping patterns.
- Disqualification of certain demographics of SNAP households that shop at convenience stores or specialty stores points to a bias in disqualifications slanted towards smaller grocers. This is likely due to confirmation bias. Regional differences in disqualification rates and shopping habits also support this contention.
- FNS does not know the correlation coefficient between ALERT scans and trafficking. Appellant has calculated this based on results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak.
- ALERT Scan categories are not inherently indicative of trafficking. Any trafficking determination is going to be based in speculation.
- Regarding Charge Letter Attachment 1:
 - These transactions are the result of the store's business practices, co-shopping, and/or the habits of SNAP clientele.
 - In Georgia, SNAP benefits are issued on the 5th through 23rd of each month based on a combination of the type of case and case name. Appellant's customers' shopping habits are like those of other SNAP households, which studies show spend half their benefits in the first week, and three-quarters by the second week.
 - Customer co-shopping is on the rise.
 - No other local convenience store offers "you-buy-we-fry" and the free pizza oven that the store offers. These are popular and encourage multiple trips a day or every day.

- Households send children to make separate shopping trips or make purchases for friends or large gatherings; the store has no right to restrict these purchases.
- Clerks memorize prices which are usually consistent or uniform and customers will gather items, bring them to the register, and return to gather more items.
- The store has two cash registers and only one EBT terminal, so transactions can be split between two registers, calculated separately, and processed sequentially in a smaller amount of time, though the transaction times in the charge letter could have been all conducted on a single register.
- Telephone orders also impact transactions.
- The store visit report shows a full supply of groceries. There are no larger stores convenient or nearby to the customers that offer materially better prices; nearly all are combination/other stores or convenience stores.
- Customers can order eligible items, such as pizza, chicken, or other items, which are gathered and ready for customers to pay for and pick up.
- Households shop recurrently at Appellant due to limited access to transportation or to satiate boredom due to unemployment.
- Regarding Charge Letter Attachment 2:
 - Sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households. It is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at Appellant's store given its inventory.
 - Households shopping at Appellant are likely to be large, resulting in large transaction amounts.
 - The largest transaction was for \$154.90, while 409 Scan F transactions were for less than \$60.00. Given the higher priced items in the store, it is not difficult to imagine \$60.00 worth of groceries being purchased in a single trip.
 - The high-priced items in the store do not require the store to have a huge amount of counter space for transactions. The transactions were facilitated by households who shopped in groups and brought their own portable carts.
 - The "you-buy, we fry" and pizza oven transactions are conducted without requiring customers to bring items to the counter. These items are more than enough to account for the large purchases that were flagged.
- It is likely the Department has misidentified legitimate transactions as a result of an errant assumption about the Store's inventory and clientele.
- To identify if the store's transactions are suspicious, the Department needs to identify another "you-buy, we-fry" pizza oven model and compare the store to a pre-ordering and pick up grocer.
- The store is categorized as a convenience store but does not have much in common with most other stores in the same category. It is 4,000 square feet in size, which is much closer to a small or medium grocery store than many of the 1,200 square foot convenience stores it is presently being compared to.

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

- Approximately 735 pages of inventory purchase invoices and receipts.
- Approximately 12 pages of cash register reports.
- Approximately 11 customer affidavits.
- Approximately 32 pages of credit card statements.
- Approximately 68 pages of bank and check cashing statements.
- Approximately 6 pages of sales tax documents.
- A letter from Mike Young, Mayor of McRae-Helena, Georgia, attesting to the importance of SNAP in the community and to the integrity of Appellant.
- An ALERT Correlation Coefficient Calculation.
- *Benefit Redemption Patterns in the SNAP in FY 2017 Final Report*, Insight Policy Research.
- *U.S. Grocery Shopping Trends Annual Report*, FMI, 2016.
- *Know Your Core, Protect Your Core, Convenience Store News for the Single Store Owner*, April 2016.
- An article entitled “Shopping pattern and food purchase differences among SNAP households and non-SNAP households in the United States.”
- A one-page profile of SNAP households in Appellant’s congressional district for 2018.
- *Foods Typically Purchased by SNAP Households*, FNS, November 2016.

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 April 16, 2019, 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. The Retailer Operations Division's decision not to impose a trafficking CMP is also 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 March 3, 2019, 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 4,200 square feet in size, with 220 square feet of storage outside of public view. The store had storage coolers and freezers.
- The store had no shopping carts or shopping baskets for customers to use.
- The store had two cash registers for food purchases and one EBT point-of-sale device.
- The firm did not use optical scanners to process transactions.
- The checkout area consisted of small and cluttered counter spaces 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. The store did sell hot pizza, chicken, and boiled peanuts.
- 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, alcohol, mobile phones/phone cards, automobile products, health and beauty aids, paper goods, cleaning products, and has 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.
- The store took telephone orders for pizza and chicken.
- The most expensive SNAP eligible food items for sale at the store included 24 packs of 16.9-ounce bottles of water for \$6.99; 12 packs of 12-ounce cans of soda for \$6.99; 11.5-ounce bags of coffee for \$5.99; and 6-ounce bags of jerky for \$5.99. Information regarding high priced items was obtained in collaboration with store personnel, and store personnel verbally provided the prices of some of the high-priced items. 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 inexpensive 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.

A significant portion of the store space was used to display and sell SNAP ineligible items, such as hair extensions and wigs and alcoholic beverages. The store also had an area for gaming machines.

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 21 sets of transactions (91 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 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Households conducted transactions at this convenience store up to six times in a single day, with many conducting three or more 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 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: EBT transactions that are large based on the observed store characteristics and recorded food stock. This attachment lists 407 large purchase SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As a point of reference, during the review period, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 or baskets and had limited counter space at checkout.

Again, the store's inventory and characteristics do not support the frequency of large transactions reflected in this Charge Letter Attachment. Additionally, 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. In large purchase transactions, where multiple items are being purchased, it is unusual for the same transaction total to naturally recur multiple times. This can indicate that transaction totals are being contrived, which happens when stores traffick SNAP benefits. The table below shows the frequency of recurrent SNAP redemption amounts during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

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. The Retailer Operations Division identified 12 other authorized stores within a one-mile radius of Appellant.

This review finds the Retailer Operations Division's assessment of nearby retailers to be inaccurate. A number of the retailers identified by the Retailer Operations Division were outside of the one-mile radius. However, this review finds there were four other SNAP authorized retailers within a one-mile radius of Appellant, including a SNAP authorized supermarket just over a quarter mile away.

Although Appellant claims there are no larger stores convenient or nearby that offer better prices, mapping shows that households shopping at Appellant had access to a supermarket nearby which likely had lower prices and better inventory. With this shopping alternative, 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

The Retailer Operations Division selected six convenience stores 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 six stores combined. For example, the other six stores, cumulatively, had two sets of transactions that met the parameters of Charge Letter Attachment 1, while Appellant had 21 sets. The comparison stores, cumulatively, had 77 transactions that met the parameters of Charge Letter Attachment 2, while Appellant had 407. Appellant's transactions were highly irregular when compared to other nearby convenience stores.

Appellant contends that its size and business model are very different from most convenience stores. Appellant says that its sales of foods that are cooked or heated after purchase make it a more attractive shopping option for customers, as does the fact that it takes telephone orders. Appellant also claims that a number of high-priced items were missed by the store visit contractor.

Regarding these contentions, it is true that Appellant's store is physically larger than many convenience stores. However, a significant amount of the store's space is used for SNAP ineligible items, such as hair extensions and wigs and alcoholic beverages, as well as gaming machines. Appellant's SNAP eligible inventory and the amount of space occupied by this inventory appears similar to that of other convenience stores. Like most convenience stores, Appellants' store has limited fresh produce and no deli meats. Meat, poultry, or fish products were generally canned, shelf-stable items. As for the high-priced items Appellant claims to sell, the store visit contractor collaborated with store personnel in determining the high-priced items in the store. In its brief, Appellant listed items that it claims to sell and provided store photographs of its inventory, but these items did not appear to be available at the time of the store visit, which was just before the store was charged with trafficking. They were also not on the inventory invoices submitted by Appellant that showed purchases during the review period. Rather, these items appear to have been added subsequently.

Likewise, it appears Appellant has subsequently enhanced its offerings of foods sold for SNAP benefits and then cooked, such as pizza and chicken. At the time of the store visit, there was no indication that the store sold pizza and chicken that would be cooked after purchase. There was one pizza oven, signage for hot food items, and one small display of already cooked pizza and chicken sold hot. Items sold hot are ineligible for purchase with SNAP benefits. In the photographs submitted by Appellant, the store now has two pizza ovens and new signage advertising the pizza and chicken. A new sign offers "frozen pizza & hot wings" for EBT and say that these items must be paid for first, before complimentary heating. This signage was not posted at the time of the store visit. Rather, this appears to be a change made after the store was charged with trafficking, and it may have been good for business as it necessitated the addition of a second pizza oven as seen in Appellant's photographs.

Regarding telephone orders, these are likely to be orders for hot pizza and chicken. As Appellant describes it, redemptions for telephone orders take place when the customer picks up food items. This makes such transactions ineligible for SNAP redemption as the redemption takes place at pick up, after has been cooked and is hot. Accordingly, telephone orders do not appear to explain the irregular redemption patterns on the charge letter attachments.

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 conducting suspicious transactions 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 four households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The household shopped at superstores or supermarkets around 60 times during the review period, indicating it had regular access to larger stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unlikely these households purchased pizza and wings, even if eligible for purchase, in large transactions multiple times in a single day. The Retailer Operations Division's analysis demonstrated that households shopping at Appellant during the review period had access to larger stores. In addition, the households' behaviors further indicated that the transaction patterns in the Charge Letter Attachments were suspect.

Evidence of Trafficking

Regarding the Appellant's contentions with respect to the reliability of the ALERT system and confirmation bias, SNAP regulations, at 7 CFR § 278.6(a), state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

The ALERT system is the USDA's computerized fraud detection tool used to identify EBT redemption patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the redemption data and patterns along with other information, such as the onsite store visit report including photographs of stock and the store layout, the transaction data and shopping patterns of the store's SNAP customers, and comparisons with similar store types in the local area, to determine whether the questionable transaction patterns were, more likely than not, the result of trafficking.

The Appellant argues that USDA does not know the correlation coefficient between ALERT scans and trafficking. The Appellant asserts that it has calculated this based on the results of undercover investigations and determined that it was a positive correlation, but the relationship between the values is weak. These contentions are pure conjecture on the part of the Appellant. The Appellant does not have the necessary data to perform a reliable correlation analysis.

SNAP Recipient Shopping Behavior

Appellant cites a number of reports and studies that discuss SNAP recipient shopping behavior to explain the transactions listed in the charge letter shopping behavior. While these reports and studies speak broadly to SNAP recipient shopping behaviors, they do not explain Appellant's transactions and why they are irregular as compared to the transactions of similar retailers also serving SNAP participants.

Negative RIB Investigation

Appellant argues that when a previous negative RIB investigation is disregarded, the statistical analysis is flawed. However, there are a variety of reasons why a firm may not conduct

violations with a RIB investigator or confidential informant. Occasionally, an EBT analysis may uncover trafficking violations where an onsite investigation could not. Often authorized stores will traffick SNAP benefits or sell ineligible items utilizing SNAP benefits only to customers that are known to the store. As such, though a negative RIB investigation may be a factor of consideration, it is not definitive evidence that the transactions listed in the charge letter attachments are legitimate and not trafficking.

Business Records

The Appellant contends that the submitted bank statements, credit card statements, cash register reports, inventory invoices, and sales tax returns for the review period substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period. The bank statements, credit card statements, and sales tax returns provide general descriptions of inventory purchases, but do not provide details that would allow FNS to evaluate the store's inventory.

The inventory invoices, including a 40 percent markup as reported by Appellant, do show that Appellant likely purchased sufficient inventory to satisfy Appellant's SNAP benefit redemptions for the review period, though there is not enough information to determine if the inventory is sufficient support all transactions, including those conducted using other forms of tender such as credit, debit, or cash. Regardless, having sufficient inventory does not explain or negate the unusual, irregular, and inexplicable transactions and patterns most indicative of trafficking.

Additionally, the inventory invoices showed large purchases of SNAP ineligible items, such as tobacco, alcohol, or foods sold hot. The SNAP eligible items purchased were mostly low-value items like snack foods and drinks. These types of items are unlikely to support high dollar transactions or to attract SNAP households to make large transactions at the store recurrently within a day or two.

Case Law and Past Administrative Reviews

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. With regard to the prior Final Agency Decisions cited by the Appellant, this administrative review decision is based on the specific circumstances of this case as documented by the materials provided by the Appellant and the Retailer Operations Division. This administrative review decision does not establish policy or supersede Federal law or regulations. The determination in this case conforms to SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

Customer Affidavits

Appellant submitted 11 customer affidavits to support its contentions. In these affidavits, customers attested to the frequency that they shopped at Appellant, the dollar amount of large purchases made, the types of items purchased, and the percentage of their SNAP benefits redeemed at the store. Customers said Appellant was one of their primary grocery stores.

Although customer affidavits attested to these households frequenting Appellant as one of their primary grocery stores, 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. Only one household was confirmed to have conducted a transaction shown in the charge letter attachments. Five other households shopped at Appellant but had no transactions that fell within the parameters of the charge letter attachments despite these households attesting to conducting large transactions at Appellant. These anomalies raise doubts regarding these affidavits and therefore the statements have little probative value in the case.

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 Xpress Stop 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.

Although Appellant requested a trafficking CMP within 10 days of receiving the charge letter, no evidence was submitted to support the request. Accordingly, Appellant failed to establish, by substantial evidence, eligibility for the trafficking CMP.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Xpress Stop 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 Xpress Stop, under the ownership of Pravinkumar Joitaram Patel, is sustained. Likewise, the Retailer Operations Division's determination that Appellant was ineligible for a trafficking CMP 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 3, 2022