

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

7 Q Liquor,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0255852

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against 7 Q Liquor (hereinafter “7 Q Liquor” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against 7 Q Liquor.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated August 3, 2022, the Retailer Operations Division informed the Appellant that 7 Q Liquor was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on August 5, 2022.

In a response to the Retailer Operations Division of August 12, 2022, the Appellant, through counsel, replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 30, 2022, informing the Appellant that 7 Q Liquor was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked September 8, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated September 14, 2022.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, *inter alia*:

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

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

Trafficking means...The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from December 2021 through May 2022. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and

- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the charge letter and in the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies the trafficking allegations. The Appellant has never sold ineligible nonfood items with SNAP benefits and has never exchanged SNAP benefits for cash.
- The owner relies on employees to run some of the store's day-to-day operations. For this reason, the owner has hired multiple clerks to work at the store while he is unable to be there. After discussing the charge letter allegations with the store clerks, they have all denied making transactions in violation of the SNAP rules.
- The Appellant is a high volume grocery and liquor store. The Appellant offers grocery and large refrigerator and freezer sections with milk, juices, dairy, yogurt, cheeses, ice cream, frozen foods, and various other cold items. As a long-term authorized SNAP retailer, the Appellant carries a large assortment of grocery items that specifically cater to SNAP customers such as cereals, fresh produce, canned fruits, vegetables, and meats, baking items, nut butters and fruit spreads, dried legumes, rice, breads, pre-packaged foods, baby formula and baby food. The Appellant also carries a large amount of other general household items such as paper goods as well as a large variety of items traditionally carried by convenience stores such as candy, nuts, chips, various snacks, beer, wine, liquor, and small-sized beverages. The Appellant tries to be a "one-stop" grocery store where families in the neighborhood can purchase food and all the household items they might need.
- The Appellant offers large quantities of grocery items at significant discounts as compared to traditional grocery stores. For example, infant formula is consistently offered at less than grocery stores. Discounts on other consumables customers buy in large quantities are also very regularly offered, including milk, eggs, cereals, deli meats, soda, etc. The Appellant keeps in inventory very high stock of these items that customers tend to buy in large quantities, particularly if there is an advertised sale.
- With regard to the transactions documented in Attachment 1, the transaction sets range between as little as 28 seconds to over 24 hours from one another. Of the 55 total sets of transactions, the majority of the transactions took place several hours apart.
- The majority of the Appellant's customers are neighboring residents and it is not uncommon for regular customers to frequent the store several times a week, and sometimes daily. It is perfectly reasonable that a regular customer would return the next day or later in the same day to make additional purchases.
- In addition, many regular customers have large families, some with more than six children, and purchase a lot of groceries from the Appellant.

- Many regular customers like walking to the store or do not have access to vehicle transportation, therefore they are limited in the amount of groceries they can carry home in one trip.
- There are not many other grocery stores in the surrounding area and the closest store is almost a mile away. Many neighbors do not have other options as the Appellant is the closest to them and traveling almost a mile to another store is very difficult.
- With regard to the transactions documented in Attachment 2, the Appellant sells a wide variety of products, ranging from snacks and single-serving drinks to larger staple foods such as breads, cereals, grains, milk, dairy products, canned foods, processed foods, meats, fresh produce and tortillas. The store visit observations notated a significant amount of stock in the staple food categories.
- Of the 486 transactions noted, 452 (93%) are under \$75.00. The Appellant does not believe that these purchases are large, as compared to the size of the store and level of inventory. Purchases under \$75.00 are very normal for a family purchasing a week's worth of groceries. This amount could be achieved with a purchase of around 10 to 15 items. For example, if a customer purchased two gallons of milk, two loaves of bread, a package of cereal, a few packs of meat items, and a few items of fruits and vegetables, the total would be upwards of \$50.00. A family purchasing food staples is also likely to buy several "treat" items such as chips and cookies. Given the wide variety of items sold at the Appellant, it is not unusually for a customer to spend over \$75.00 in one shopping trip.
- Although the Appellant tries to maintain sales prices lower than "big box" stores, inflation and the rising cost of goods has forced the store to increase its prices during 2021-2022. Customers now have to spend more but are getting less in terms of quantity as compared to the previous few years.
- A review of the transactions also reveals that many of the same households are making the majority of the purchases in the transaction list. It is reasonable to believe that the same regulars are shopping at the store regularly.
- The alleged SNAP transactions must be analyzed within the context of a high-volume grocery store, at which families and customers can do all their grocery shopping, and where they can save significantly and get more for their dollar.
- The Appellant requests the imposition of a CMP in lieu of a permanent SNAP trafficking as it meets the criteria for eligibility for a CMP in lieu of permanent disqualification for trafficking, as required by 7 CFR Section 278.6(i) and (j).
- With regard to Criterion 1, the Appellant implemented an effective compliance policy and training program to prevent the violations alleged in the charge letter that all employees are required to follow. This includes (1) Reviewing the most recently updated *SNAP Training Guide for Retailers* as well as videos available on the USDA website with a new employee; (2) Providing examples of permitted conduct as well as examples of prohibited conduct; (3) Reviewing SNAP store policy with new employees; (4) Conducting several SNAP transactions with actual customers in front of the new employee, allowing the new employee to shadow and learn; (5) Once a new employee demonstrates a satisfactory understanding of which transactions are permitted and which are prohibited, then they are allowed to conduct transactions on their own; and (6) Periodically checking in with the employee to ensure that they understand the rules and if they have any questions.
- The SNAP store policy includes a set of instructions for all employees to follow regarding the acceptance of SNAP benefits and the consequences of failing to follow the SNAP rules. In addition to the store policy, within 30 days of their hiring, a new employee is required to undergo training and sign a Training Certification form. Furthermore, each employee is

required to undergo an annual training and sign an Annual Certification form and/or Training Certification form following annual training. In addition, the Appellant's policy has been to audit the store's monthly sales receipts with their monthly purchase receipts to verify SNAP transactions corresponded with sales and store inventory.

- With regard to Criterion 2, the store policy, Training Certification and Annual certification forms were all in effect prior to the commission of the alleged violations. For example, the store policy is dated July 1, 2017 and the Training Certifications and Annual Certifications all pre-date the dates of the alleged violations. In addition to having these documents as part of their compliance policy, the Appellant's internal policy has been to audit the store's monthly sales receipts with its monthly purchase receipts to verify SNAP transactions corresponded with sales and store inventory. The store policy is posted in the store and readily accessible and viewable to all employees, just as the *SNAP Training Guide for Retailers* is.
- With regard to Criterion 3, the Appellant implemented an effective personnel training program which consisted of several training steps. First, the Appellant would review the most recently updated *SNAP Training Guide for Retailers* as well as videos available on the USDA website with a new employee. During this time, the Appellant would provide examples of permitted conduct as well as examples of prohibited conduct. Second, the Appellant would review the EBT Store Policy with a new employee. Third, the Appellant would conduct several EBT transactions with actual customers in front of the new employee, allowing the new employee to shadow our client to see which transactions were permitted and which were prohibited. Fourth, once a new employee demonstrated a satisfactory understanding of which transactions were permitted and which were prohibited, then they were allowed to conduct transactions on their own. Finally, the Appellant would periodically check in with the employee to ensure that they understood the rules and if they had any questions.
- With regard to Criterion 4, upon receipt of the charge letter, the store owner was shocked and disappointed. The owner immediately discussed these transactions with his employees, all of whom have denied any wrongdoing. The owner is conducting an investigation of the allegations to determine if any additional evidence may be uncovered.
- The owner has decided to implement a bolstered compliance program at the store, which he is in the process of designing. The bolstered program will include many of the same elements of the previous compliance program, however with additional checks. A summary of the plan he is designing includes: (1) Immediately upon hiring a new employee, each employee will be required to review the *SNAP Training Guide for Retailers* as well as videos available on the USDA website with our client; (2) The Appellant will post the store policy in a conspicuous place and next to the cash register; (3) Each employee will review the EBT store policy and initial each store policy listed, including a provision which states that violation of these policies will result in termination of employment. Each employee will sign and date the store policy form; (4) Each employee will complete a Training Certification when they are initially hired. The Appellant will provide each employee with their own copy of the *SNAP Training Guide for Retailers* along with any other resources available from the USDA; (5) Each employee will complete an annual certification each year. As part of the annual certification, each employee will review the most up-to-date *SNAP Training Guide for Retailers* as well as view any videos available on the USDA website with our client; (6) The Appellant has already spent time with current employees to retrain and review all EBT rules. Each current employee signed a new Training Certification form; and (7) The Appellant is willing to implement other policies and procedures as USDA sees appropriate.

- A SNAP disqualification would impose a hardship on area SNAP customers as the Appellant is a neighborhood grocery store located in a densely populated, low-income area which many neighbors depend on to supplement their grocery needs. There are many neighbors with limited access to vehicles who are unable to easily travel to larger grocery stores on a regular basis.
- A SNAP disqualification would impose a financial hardship on the Appellant. The Appellant is a family business and SNAP sales account for almost 25 percent of the store's sales. The store stands to lose a significant amount of its customer base if it is unable to accept SNAP benefits.
- The owner has always been a law-abiding owner and holds many licenses with respect to the store, including an Alcoholic Beverage Control and lottery licenses, and has never had any violations of any kind.

In support of these contentions, the Appellant, through counsel, submitted the following information for review:

- Declaration of store owner dated August 12, 2022 (3 pages);
- Food stock photos (13 total);
- 7 Q Liquor Employee Policy dated July 1, 2017 (1 page); and
- Training Certifications EBT Program (1 page each) of three employees which did not include the store owner. The Training Certifications are dated from January 5, 2018 through August 10, 2022.

ANALYSIS AND FINDINGS

SNAP Authorization

During the review period of December 2021 through May 2022, 7 Q Liquor was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on March 10, 2005 and in subsequent reauthorization applications, the owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 15, 2022 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if

there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,305 square feet in size with approximately 279 square feet of storage area outside of public view which stocked predominantly drinks;
- Had one storage walk-in cooler which stocked predominantly drinks and alcohol;
- Did not have storage freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One specialty cash register (lottery, Western Union, money orders, etc.);
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Had optical scanners;
- Did not have a special pricing structure, such as prices ending in \$x.x9 or \$x.00;
- Did not round transactions up or down at the checkout counter;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Telephone and on-line orders were not taken;
- Delivery was not offered to customers;
- The six most expensive (costing \$5.00 and above) SNAP-eligible food items in stock were Coca Cola at \$7.99 per 12-pack (9 units in stock); Folgers coffee at \$7.79 per 11.3 ounces (7 units in stock); Matador jerky at \$6.99 per 3 ounces (6 units in stock); Micheladas drink mix at \$6.99 per 25 ounces (6 units in stock); Doritos at \$6.29 per 14.5 ounces (3 units in stock); and Oreos cookies at \$5.99 per 1 pound (5 units in stock);
- Had dusty cans/packages;
- No fresh or frozen meats, poultry, or seafood;
- No frozen food stock other than ice cream
- Did not have a kitchen and hot foods were not sold;
- Did not have a deli or prepared food section and deli meats and cheeses by the pound were not sold;
- Meat items included units of eggs, canned fish/seafood, canned/potted meat, hot dogs, packaged lunch meat, and meat jerky;
- Dairy products included milk (dairy and coconut varieties), margarine, cheese, and sour cream;
- Had a limited variety and amount of fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta/ramen, cereal, rice, nuts, flour, baking mix, tortillas, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, condiments, sugar, and cakes/pastries; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, charcoal, pet food, lottery tickets, alcohol, automotive supplies, sunglasses, and incense.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 55 sets of transactions (133 total transactions) that total \$6,470.14 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 34 different households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that the majority of the Appellant’s customers are neighboring residents and it is not uncommon for regular customers to frequent the store several times a week, and sometimes daily. It is perfectly reasonable that a regular customer would return the next day or later in the same day to make additional purchases. Discounts on infant formula and other consumables customers buy in large quantities are very regularly offered, including milk, eggs, cereals, deli meats, soda, etc. The Appellant keeps in inventory very high stock of these items that customers tend to buy in large quantities, particularly if there is an advertised sale.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant’s stock and facilities and are therefore, indicative of trafficking.

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a limited food stock, a limited variety and amount of fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no

frozen food stock other than ice cream. The second, third, and subsequent transactions in each set are too large to consist of forgotten items. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The store visit report, which was completed in collaboration with and signed by a store employee, and photographs from the store visit as well as the food stock photos provided by the Appellant offer no explanation as to why SNAP customers would routinely shop at the Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The majority of the Appellant's food stock consists of packaged food items, canned items, accessory food items, snacks, and beverages. The food stock photos provided by the Appellant show a larger quantity and variety of stock than was observed during the store visit. It is likely that this additional store stock was acquired after the receipt of the charge letter in an attempt to explain the suspicious transactions and patterns noted in the charge letter. It is important to note that even "well stocked" stores will sometimes engage in trafficking, so the food stock shown in the Appellant's photos provides no definitive explanation for the suspicious transactions and patterns noted in the charge letter. 5 U.S.C. § 552 (b)(7)(E).

In addition, the store visit report and photos indicate that there was a small checkout area with one cash register and one EBT POS device for ringing-up food purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

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

The Appellant contends that there are not many other grocery stores in the surrounding area and the closest store is almost a mile away. Many neighbors do not have other options as the Appellant is the closest to them and traveling almost a mile to another store is very difficult. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 25 SNAP authorized retailers located within a 1.0 mile radius of 7 Q Liquor, including 1 super store, 2 supermarkets, and 22 other convenience stores, that could meet the nutritional needs of SNAP customers. There were 73 SNAP authorized retailers located within a 2.0 mile radius of the Appellant, including 10 super stores, 8 supermarkets, 3 medium grocery stores, 3 small grocery stores, and 49 other convenience stores. Some of these area authorized stores offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The Appellant contends that many regular customers like walking to the store or do not have access to vehicle transportation, therefore they are limited in the amount of groceries they can carry home in

one trip. However, the record indicates that SNAP customers who shopped at 7 Q Liquor during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods and not the result of trafficking of SNAP benefits. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims. The Appellant has the burden to provide relevant evidence to rebut the trafficking charges. This burden has not been met.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This charge letter Attachment documents 486 SNAP transactions, as large as \$124.51, that total \$25,422.78. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the store is a high volume grocery and liquor store selling a wide variety of products. The store visit observations notated a significant amount of stock in the staple food categories. The Appellant offers grocery and large refrigerator and freezer sections with milk, juices, dairy, yogurt, cheeses, ice cream, frozen foods, and various other cold items. The Appellant does not believe that these purchases are large, as compared to the size of the store and level of inventory. Purchases under \$75.00 are very normal for a family purchasing a week's worth of groceries. This amount could be achieved with a purchase of around 10 to 15 items. Given the wide variety of items sold at the Appellant, it is not unusually for a customer to spend over \$75.00 in one shopping trip.

However, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. It is rare for a convenience store such as 7 Q Liquor to have purchases like those included in this Attachment to the charge letter.

The store visit observations indicate that that the Appellant is a convenience and liquor store which measures approximately 1,305 square feet in size with approximately 279 square feet of storage space outside of public view which stocked predominantly drinks, had one walk-in storage cooler which stocked predominantly drinks and alcohol, and had no storage freezers. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores. No evidence was submitted substantiating the Appellant's claim that the store's prices are lower/more competitive than other area authorized SNAP stores. It is unlikely that the Appellant maintains sales prices lower than "big box" or traditional grocery stores due to the ability of these larger stores to purchase larger quantities of foods at more competitive prices than a convenience store such as the Appellant.

The FNS store visit report, which was completed in collaboration with and signed by a store employee, as well as the store visit photos show that 7 Q Liquor offers a limited stock of SNAP-eligible foods with no fresh or frozen meats, poultry, or seafood, a limited variety and amount of fresh produce stock, no frozen food stock other than ice cream, and a lack of an abundant depth and breadth of staple foods. In addition, the store had dusty cans/packages indicating that food inventory is not sold on a regular or consistent basis.

The store visit observations also indicate that there were only a few expensive eligible foods in stock, all of which were in limited quantities, which would account for these large amounts. In addition, there was a limited checkout counter space, one cash register and one EBT POS for use in ringing-up SNAP transactions, and no conveyor belts to expedite high dollar or rapid consecutive purchases. In addition, there were no shopping carts and no shopping baskets in which to transport the large number of items required to make up these large transaction amounts. Without a sufficient number of these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

While the Appellant contends that the store sell infant formula and foods, no infant formula or foods was in stock at the time of the store visit. It is also important to note that even if the Appellant carried some infant formula and infant foods, the majority of households that qualify for WIC Program benefits also qualify for and are SNAP recipients. In most cases, these households utilize their WIC Program benefits to purchase infant formula and infant foods in lieu of their SNAP benefits in order to save their SNAP benefits for other needed food items. The Appellant is not a WIC Program vendor and therefore, it is unlikely that WIC Program recipients would routinely or consistently choose to utilize their SNAP benefits to purchase infant formula and foods at the subject firm.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions. 5 U.S.C. § 552 (b)(7)(E).

While the Appellant's contention may be true that the rising cost of goods has forced the store to increase its prices and customers now have to spend more but are getting less in terms of quantity as compared to the previous few years, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If the rising cost of goods is causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that a review of the transactions also reveals that many of the same households are making the majority of the purchases in the transaction list. It is reasonable to believe that the same regulars are shopping at the store regularly. The alleged SNAP transactions must be analyzed within the context of a high-volume grocery store, at which families and customers can do all their grocery shopping, and where they can save significantly and get more for their dollar.

5 U.S.C. § 552 (b)(7)(E).

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, 5 U.S.C. § 552 (b)(7)(E). Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Corrective Action

With regard to the Appellant's contentions with respect to the imposition of corrective actions to insure that SNAP violations do not occur in the future, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Customer Hardship

With regard to the Appellant's contention that a SNAP disqualification would impose hardship on participating SNAP households, 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households

because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Financial Hardship

With regard to the Appellant’s contention that a SNAP disqualification would impose a financial hardship on the firm, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

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

Compliance History

The Appellant is correct that the firm has not been cited for prior violations. However, a record of participation in the 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.

Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations 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 extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a nonmanagerial 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, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must 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.

CIVIL MONEY PENALTY

In the August 3, 2022 charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant’s receipt of their charge letter. As

specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

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

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 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.

In the Appellant's reply to the charge letter and in the request for administrative review, the Appellant, through counsel, requested consideration for a civil money penalty in lieu of permanent disqualification and contended that the firm meets the criteria for eligibility for a CMP in lieu of permanent disqualification for trafficking, as required by 7 CFR Section 278.6(i) and (j). In support thereof, the Appellant submitted a declaration of the store owner, 7 Q Liquor Employee Policy dated July 1, 2017 (1 page); and Training Certifications EBT Program (1 page each) of three employees which did not include the store owner. The Training Certifications are dated from January 5, 2018 through August 10, 2022.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the 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. **5 U.S.C. § 552 (b)(7)(E).**

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. As the Appellant did not provide the required supporting documentation, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against 7 Q Liquor is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

January 10, 2023