

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

A & B Quick Shop,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0248354

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

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

CASE CHRONOLOGY

By letter dated December 13, 2021, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in February 2021 through July 2021. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in an email dated December 26, 2021, and in phone calls to Retailer Operations staff on December 22, 2021, and December 27, 2021, but did not request or provide any supporting documentation for a CMP. The Office of Retailer Operations and Compliance notified Appellant by letter dated January 4, 2022, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter sent via email on January 15, 2022, Appellant appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received from Appellant, through counsel.

STANDARD OF REVIEW

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

CONTROLLING LAW

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

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

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

7 CFR § 278.6(i) states: "FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program."

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

SUMMARY OF THE CHARGES

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

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

APPELLANT’S CONTENTIONS

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

- Two or three SNAP household customers at times share benefits;
- During the pandemic people do not have much;
- The store has been in business 30 years without any violation and if he is found to be violating will not violate again;
- The retailer offers a food storage service where the SNAP customer purchases food and leaves it in the firm’s cooler and then takes the purchased food as needed;
- SNAP retailer since 1984;
- Only one POS terminal for FS and credit cards. The list shows some two terminals and wrong times as store is only open 9:00 AM-9:00 PM daily;
- Started offering plate lunches and BBQ sandwiches during pandemic and had three microwaves so they could heat them;
- The store sells lots of frozen microwaveable sandwiches and dinners. Customers buy these by the box;
- During pandemic, customers would share EBT cards with their friends, neighbors, or relatives and the store would make separate tickets so they would know their friend’s amount;
- The owner would also get meat packages done by the local slaughterhouse and sell to customers because they couldn’t travel far;
- The store sells multiple packages of rice up to 50 pounds and beans up to four pound

- bags. Customers buy boxes of 50 chips and also cakes and cookies by the case; and,
- During Thanksgiving would have plate lunches and other meat items by order that would cost \$80.00-\$100.00 per family;

Appellant submitted no evidence or other rationales in support of these contentions.

ANALYSIS AND FINDINGS

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

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

Store Background and FNS Store Visit

FNS initially authorized the firm on September 10, 1985. The record shows no SNAP violations but does document that the firm received a formal warning letter dated May 6, 2020, stating that violations were found at the firm during an undercover investigation. The record further indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during an August 16, 2021, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a convenience store offering an extremely limited quantity and variety of staple foods and carried no unique items or offered any distinctive services. The store stocked traditional American foods and had no ethnic or specialty food items.
- The store was very disorganized and cluttered with empty boxes and packaging materials everywhere and with cases of alcohol and drinks in the aisles
- The store visit report and photos showed one shopping cart and no hand baskets for customer use. The single cart was full of empty cardboard boxes and packaging materials so was not available for customer use thus severely limiting the amounts of food that could be moved to the checkout.

- No food packages, bundles, bulk items, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase.
- The store visit report specifically noted that the firm was not a specialty food store and that there were no meat bundles, fish specials, or fruit/vegetable boxes for sale.
- The checkout area was approximately 0.5 feet wide by 2.0 feet deep with many displays, including loose glass bottles of alcohol, on both sides leaving a very limited area for customers to place their purchases. The extremely small checkout area would make it problematic to process large orders. The checkout area had one cash register, one POS device, and no optical scanner as confirmed by the store owner.
- The firm had no kitchen/food prep area and stocked no deli products.
- The firm had an extremely limited stock of relatively inexpensive staple foods that also included single serving and pre-packaged items with a significant portion of inventory in accessory foods (soda, candy, snacks, many other drinks) and many ineligible items.
- The firm had no fresh or frozen unprocessed meat or seafood, no dried seafood, a very limited quantity and variety of processed meats and seafood (hot dogs, packaged lunch meats, and canned meat/poultry/fish), no deli meats, no salami, no sausages, no bacon, no brown and serve sausages, no frozen entrees, no frozen dinners, no eggs, almost no fresh fruits or vegetables (several onions with sprouts, shriveled potatoes, and several bananas), no frozen fruits or vegetables, no dried fruits or vegetables except small bags of beans, packaged nuts, 100 percent fruit juices, no 100 percent vegetable juices, no fruit cups, several canned soups, a very limited stock of canned and packaged staple food items, no packaged cheese, no cheese sticks, no deli cheese, no cream cheese, no large containers of yogurt, no single serving yogurt, no single serving yogurt drinks, four margarine, no butter, no sour cream, four half-gallons of fresh milk, no single serving containers of fresh milk, seven single serving milk drinks (Nesquik), no canned milk, no shelf staple milk, 11 coconut milk, no soy milk, no Lactaid milk, no powdered milk, no half & half, four bread, no rolls, no croissants, no tortillas, no taco shells, no tostadas, no pitas, no corn meal, flour, sugar, no brown sugar, rice, cold cereal, no single serving cold cereal, hot cereal, several single serving noodle soups, no canned pasta, no single serving pasta, dry pasta, no dry noodles, no pancake mix, mac&cheese, no single serving size mac&cheese, several baking mixes, no Hot Pockets, no Lunchables, no single serving frozen heat n' eat foods, several small containers of cooking oil, no olive oil, no honey, coffee, no tea, two cocoa, no baby foods in jars, no baby cereals, no infant formula, no baby juices, and no diapers.
- Ineligible items included: tobacco, alcohol, ATM, health and beauty items, household products, paper products, hats, clothing, shoes, backpacks, coolers, kitchen wares, perfume, jewelry, and insecticide. Accessory foods included: many un/carbonated drinks, snacks, baked goods, no candy, ice cream, condiments, spices, cooking oil, no olive oil, baking mixes, no honey, sugar, no brown sugar, four containers of coffee, no tea, and two packages of cocoa.
- The firm was open 8 AM-9 PM daily.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were not individually priced. The FNS store visit report, completed in conjunction with the store owner, showed that most food prices end in .x9 cents. A price

ending in .x9 cents is a common pricing structure for stores of this type. The FNS store visit report listed the most expensive food items costing more than \$5.00 for sale in the store as being: one 14 ounce container of Taster's Choice coffee priced at \$24.99 and three 33.9 ounce containers of Folgers Coffee priced at \$8.99. There were no other items for sale that cost more than \$5.00. This listing of the most expensive items was provided by the store owner during the store visit.

- The store visit report and photos noted that the store had empty or minimally stocked shelves/coolers, poor lighting, rusty equipment, faded/missing labels, dusty cans/packages, and empty/broken/unused coolers/freezers. Additionally, the six onions in stock were growing sprouts and the potatoes were shriveled and discolored.
- The firm was not a WIC vendor and did not stock any baby foods, cereals, juices, or formula.

Multiple Transactions in Unusually Short Time Frames

This Attachment documents 55 individual transactions in 24 sets of two or more transactions conducted by 18 different households in a short period of time. Individual transaction amounts range from \$20.63 to \$159.82 with 27 transactions exceeding \$50.00 and six transactions for \$100.00 or more. There are transaction set totals as high as \$292.00, \$235.14, \$206.15, \$201.18, \$183.91, \$178.23, \$172.86, \$172.19, \$171.84, \$167.83, \$120.42, \$114.12, \$113.65, \$105.32, and \$102.65 to list the highest dollar value sets. The dollar amounts of subsequent transactions in each set are substantial and equal or exceed \$20.63 in each of the 24 sets with subsequent purchases exceeding \$40.00 in 17 sets and \$100.00 in two sets. The span of time for transaction sets ranges from two minutes and 27 seconds to more than 47 hours with nine of the 24 sets occurring over multiple days. Only four of the 24 transaction sets occur in under 62 minutes. Two sets are comprised of four individual transactions and two are comprised of three individual transactions while the remaining 20 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

This Attachment includes an unusually high number of transactions ending in a same cents value such as 11 transactions ending in .x3 cents, 17 ending in .x6 cents, and 13 ending in .x9 cents accounting for 74.55 percent or approximately three out of every four transactions in this Attachment. When many transactions end in the same cents, it appears that the transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking. Per the store owner during the FNS store visit, the firm did not offer a special pricing strategy or have expensive eligible food stock that would routinely result in these same repeating ending cents values and its two most expensive items, as confirmed by the store owner, were three units of Folger's Coffee priced at \$8.99 and one unit of Taster's Choice Coffee priced at \$24.99 which would not account for these transactions. It is unclear how so many transactions between \$20.63 and \$159.82 could routinely end in these same repeating ending cents values considering the store's .x9 pricing plan and available stock.

It is also noted that 35 of the 55 transactions listed in this Attachment occur outside of the store's reported operating hours of open 8:00 AM-9:00 PM daily as stated by the store owner during the FNS store visit. Appellant's November 6, 2020, SNAP reauthorization application also confirms these same operating hours. Many of these afterhours transactions occurred in the early morning hours of 2:00 AM-5:00 AM. It is an indication of potential trafficking when there are numerous transactions occurring outside of the store's reported business hours.

Appellant's contentions regarding this charge are addressed below.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible foods they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's food stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item after checking out or of multiple members of the same household or friends shopping together and making separate purchases using the same EBT card in quick succession or household members checking their balances as all but four of the 24 transaction sets occur in more than 62 minutes time. It also makes no sense that a household would conduct as many as four separate transactions over a short period of time that total to a substantial part of the household's monthly SNAP issuance when that household is also shopping at many larger stores. The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.63 with subsequent purchases exceeding \$40.00 in 17 sets and exceeding \$100.00 in two sets, far more than the cost of a forgotten item or two.

It is further noted that the September 2020 FNS report on *Benefit Redemption Patterns in SNAP in FY 2017* states that while households on average did spend 77.6 percent of their benefits by mid-month with over half being expended in the first week after issuance, that 82.1 percent of all benefits were spent at a super store or supermarket. Only 0.7 percent of households shopped exclusively at grocery stores while only 4.6 percent did not shop at a super store or supermarket. On average, households conducted 9.4 transactions per month that averaged \$27.36. Accordingly, the transaction patterns contained in the charge letter Attachments are not typical, but are unusual and indicative of trafficking.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total \$76.78 or more when the comparable average convenience store SNAP transaction amount in St. Landry Parish during the review period was \$10.17. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames was not evident at other nearby grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Office of Retailer Operations and Compliance's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a convenience store with a very limited stock of staple foods. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

For example:

One of the households in this Attachment spent \$321.42 at a national chain "member's only" super store located 25.02 miles away from Appellant's location and \$8.51 at another super store located 23.05 miles away on the same day. Two days later it spent \$91.98 at the Appellant firm. The next day it spent \$43.13 at a national chain super store located 16.02 miles away and less than one hour later spent \$79.86 at the Appellant firm before travelling to another super store located 0.72 miles away and spending \$70.32. In summary, this household spent \$443.38 in four transactions at four super stores while spending \$171.84 in two transactions at Appellant's convenience store that offered an extremely limited stock of staple foods. This household conducted a total of 17 transactions at the Appellant firm during the six month review period while conducting 14 transactions at seven super stores, three of which are located in or near Lafayette and range from 15.87-27.04 miles away from Appellant's location. Common sense dictates that this household most likely resided in or near these super stores and would have had to travel past them in order to reach the Appellant firm. This clearly shows that this household had ready access to transportation and did not consider the Appellant firm to be its primary grocer.

A second household spent \$115.50 at a supermarket located 2.76 miles away and \$69.35 at a Dollar Store located 0.15 miles away on the same day. The next day it spent \$86.36 at the Appellant firm. The following day it returned to the Appellant firm and conducted three transactions (\$119.79, \$1.59, and \$1.50) totaling \$122.88 before spending \$33.71 at a national chain super store located 2.67 miles away. The transactions at the firm for \$119.79 and for \$1.59 occurred at 5:03 and 5:06 AM, respectively while the \$86.36 transaction occurred at 6:43 AM. In summary, this household spent \$209.24 in four transactions at the Appellant firm that occurred before and after transactions at a supermarket and super store that totaled \$149.21.

It is inexplicable, based on the Appellant firm's extremely limited stock of staple foods and lack of any unique food items, that any SNAP household would regularly spend hundreds of dollars in legitimate purchases of eligible food items at the Appellant firm when it was also shopping at a far better stocked super stores and supermarkets before and after the purchases at the firm.

This unusual and erratic shopping pattern is indicative of trafficking. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

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

High Dollar Value Transactions

This Attachment lists 93 individual EBT transactions ranging from \$50.00 to \$214.00 with 93 transactions exceeding \$50.00 and 16 exceeding \$100.00. While these high dollar amounts may not be unusual for a big box super store, the substantial number of extremely high dollar transactions is uncharacteristic for a convenience store offering an extremely limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$10.17 for this store type in St. Landry Parish during the review period. This is unusual and indicative of trafficking.

The same unusual pattern of a disproportionate percentage of transactions ending in .x3, .x6, and .x9 cents, as previously discussed on Attachment 1, is also prevalent in this Attachment. The firm's pricing plan and available stock offer no basis for this unusual pattern and the Appellant has offered no explanation for this pattern.

The evidence under review shows that many SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the firm. These high dollar value transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is very limited, often on the same day, or within 24-72 hours of purchases at larger food stores.

For example:

A household spent \$210.99 at a national chain super store located 2.01 miles from the Appellant firm and the very next day spent \$133.96 at the Appellant firm. In a different month, this household shopped at a super store 2.72 miles away spending \$49.48 and less than three hours later spent \$92.58 at the Appellant firm. This household conducted additional suspicious transactions throughout the review period. It is unlikely that the Appellant firm would stock any eligible food items that could not be purchased at any of the super stores where this household was routinely shopping, and likely for less money.

A different household spent \$153.68 at a national chain super store located 3.01 miles from Appellant's location and 26 minutes later conducted two transactions (\$1.51 and \$134.96) at the Appellant firm totaling \$136.47. Both of the transactions at the Appellant firm occurred shortly after 7:00 AM, prior to the firm's reported business hours. The very next day this household spent \$150.00 at a supermarket located 15.87 miles away. The following month this household spent \$214.00 at the Appellant firm at 6:12 AM and 36 minutes later spent \$9.26 at a large grocery store located 14.05 miles away and then spent \$342.19 at a supermarket located 13.00 miles away. This household conducted additional suspicious transactions throughout the review period.

It is highly suspicious that SNAP households with extremely limited food dollars would spend more than \$100.00 at Appellant's extremely poorly stocked firm immediately before and/or after having spent comparable or larger amounts at far better stocked super stores and supermarkets located at a distance from Appellant's location. These shopping patterns make no sense since the Appellant firm carried no unique food items and had significantly less quantity and variety of both staple and accessory foods. There are no eligible food products at the Appellant firm that could not be found at any of the larger stores where these households regularly shopped.

Appellant offered no justification as to why households would spend significant amounts of their very limited SNAP benefits at Appellant's convenience store with an extremely limited quantity and variety of staple food within minutes or hours of shopping at larger and better stocked stores that would have offered a greater selection of staple foods at lower prices. These suspicious transactions are indicative of trafficking at the Appellant firm. The Food and Nutrition Act of 2008, as amended, requires only a single occurrence of trafficking to permanently disqualify a SNAP retailer.

Both the FNS 2011 and the 2020 reports titled "*Benefit Redemptions in the Supplemental Nutrition Assistance Program*" for fiscal years 2007 and 2017, respectively, show that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a super store or a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (\$27.36 on average for 2017) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

No explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater quantity and variety of SNAP eligible foods at lower prices and who apparently have no transportation limitations would be conducting high dollar transactions at an extremely poorly stocked convenience store. It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores, supermarkets, and other larger grocery stores the households in this Attachment were regularly shopping at and these stores would also likely have significantly lower food prices yet these households continued to spend large dollar amounts at a convenience store with an extremely

limited stock of staple foods and no shopping carts available for use or even handheld baskets that would be needed for the high dollar value transactions in this Attachment. There is no legitimate reason why these households would spend so much of their SNAP allotments at the Appellant firm when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking SNAP benefits at the firm. Based on this discussion, trafficking is the most viable explanation for these irregular shopping patterns.

FNS records show there were at least six comparably sized or larger authorized retail food stores within a 0.72 mile radius of Appellant's location that included one super store in addition to two convenience stores and three combination grocery stores. There were many larger stores located further away that included super stores, supermarkets, and other larger grocery stores. The households listed in the charge letter Attachments regularly shopped at these larger stores as well as at additional larger stores located further away during the review period. These larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at Appellant's extremely minimally stocked convenience store.

The Appellant firm had irregular SNAP transaction data compared to like type stores in St. Landry Parish. A comparison of Appellant's redemption data to the average for parish convenience stores using ten dollar increments showed that Appellant's transaction count and dollar volume was significantly lower in the lowest ranges (\$0.00-\$19.99) than like type stores and then began to significantly exceed like type stores until Appellant's transactions stopped at the \$210.00-\$219.99 range. It is very unusual that transactions at the Appellant firm stopped at the \$210.00-\$219.99 range while the transaction averages at like type stores did not drop below one transaction until after the \$110.00-\$119.99 range, almost half that of the Appellant firm. This transaction pattern does not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Office of Retailer Operations and Compliance determined there was no credible reason for the firm to have transactions at these dollar levels given the extremely limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant's contentions regarding this charge are addressed below.

Appellant is mistakenly equating a firm having sufficient stock to be qualified as a SNAP retailer with being a well-stocked store. While the Appellant firm did have adequate stock to qualify as a SNAP retailer, one has to look at the quantity and variety of a store's eligible food inventory before one can make a statement as to how well a store is stocked. A store can meet the minimum stocking criteria under Criterion A to become a SNAP retailer by offering for sale, on a continuous basis, no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each food variety, and at least one variety of perishable foods in at least two staple food categories. In other words, a store can qualify with as few as 36 units of staple foods.

Even a cursory review of the August 16, 2021, FNS store visit report and photos shows that the firm had an extremely limited staple food stock that would not compare to that found at nearby super stores and supermarkets where these same households were regularly shopping. The firm's highest priced items have been listed previously and provide proof that the firm stocked virtually no expensive eligible food items. While some households may purchase some of the firm's highest priced items, it is unlikely they would be purchased multiple times and would account for the many transactions exceeding \$100.00 in this Attachment. In reality, and as evidenced by the FNS store visit, the firm's actual quantity and variety of staple food stock is extremely limited plus the store is very disorganized and cluttered making it unlikely that SNAP households that shop at super stores and supermarkets on a regular basis would consider the firm to be their primary grocery store.

Although the subject store may have contained sufficient inventory to satisfy any single charge letter transaction, this does not explain why a SNAP household would spend up to \$214.00 in a single transaction at a convenience store with an extremely limited stock of staple foods, that is not optimized for bulk sales, and that is located in proximity to superiorly stocked competitor stores.

Information obtained during the August 16, 2021, FNS store visit shows that the Appellant firm offered an extremely limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. It is specifically noted that the firm had no fresh or frozen unprocessed meat or seafood, no dried seafood, a very limited quantity and variety of processed meats and seafood, no frozen entrees, no frozen dinners, fresh fruit consisted of 14 bananas, fresh vegetables consisted of six onions that were growing sprouts and potatoes that were shriveled and discolored, no frozen fruits and vegetables, and a very limited stock of canned and packaged staple food items. Additionally, the majority of the firm's staple food stock was covered in a thick layer of dust indicating a very low turnover of stock. The fact that tobacco, alcohol, ATM, health and beauty items, household products, paper products, hats, clothing, shoes, backpacks, coolers, kitchen wares, perfume, jewelry, and insecticide are not eligible for purchase with SNAP benefits also provides no justification for the large transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food dollars, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have multiple large shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months. The firm also had an absurdly small checkout area and no shopping carts that were available to customers thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries an extremely limited stock of staple food items also makes it improbable that the high

dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on December 14, 2021. Following the receipt, the volume of SNAP redemptions at the Appellant firm decreased 8.16 percent from November 2021 to December 2021 while the average dollar amount of SNAP transactions decreased 15.74 percent and the number of SNAP transactions increased 8.95 percent. A pronounced fluctuation in SNAP redemptions following the receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts. The increase in the number of transactions combined with the decrease in the average dollar amount of transactions is indicative of the firm dividing a large dollar value transaction into a series of smaller dollar value transactions and is a method which violating stores use to avoid high dollar transactions that cannot be supported. This is evidence of suspicious transactions at the Appellant firm that can most likely be attributed to trafficking of SNAP benefits.

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

Other Contentions

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

Appellant's claims that the firm offered plate lunches and BBQ sandwiches during the pandemic, meat packages from the local slaughterhouse, and plate lunches and meats by order for Thanksgiving is not supported by any evidence. It is also noted that the review period did not include Thanksgiving. Additionally, the FNS store visit conducted on August 16, 2021, showed

no frozen microwaveable sandwiches or dinners as claimed by Appellant, let alone cases of these items for sale. The visit also showed only small sized packages of rice and beans, not the 50 pound bags of rice or four pound bags of beans as claimed. While the store visit photos did show some boxes containing chips, cookies, and snacks, many of these were open suggesting that they were for replacement stock. There also was no signage indicating that these boxes were available for purchase and most items at the firm were not individually priced.

Appellant offered no evidence to support the claims that SNAP recipients were sharing their SNAP benefits with friends, neighbors, or relatives. Additionally, no evidence of the firm offering a food storage service was offered nor was an explanation given as to how this service would have shown the legitimacy of the charge letter transactions.

Appellant's claim that the firm has had no violations is true; however, it should be noted that the firm received a formal warning letter from FNS in 2020 for allowing the purchase of ineligible items using SNAP benefits during an undercover investigation. That the firm has been in business for 30+ years has no bearing on the matter under review as the Food and Nutrition Act of 2008, as amended, requires only a single occurrence of trafficking to permanently disqualify a SNAP retailer.

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

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly state that "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Office of Retailer Operations and Compliance staff before the decision was made to issue a charge

letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

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

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

CIVIL MONEY PENALTY

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

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

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

CONCLUSION

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

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

RIGHTS AND REMEDIES

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

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

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

May 26, 2023