

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

**Belmont Gas & Food Mart,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0246317**

**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 Belmont Gas & Food Mart (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 August 3, 2021, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in November 2020 through April 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, through counsel, requested and was approved for an extension of time to respond in a letter dated August 23, 2021, that established September 13, 2021, as the deadline to respond to the charges. Appellant, through counsel, on September 13, 2021, requested additional time and was approved for a new deadline date of September 17, 2021.

Appellant responded to the charges in a letter dated September 14, that did not request a CMP or provide any supporting documentation as required. The Office of Retailer Operations and Compliance notified Appellant by letter dated January 26, 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 February 7, 2022, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

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

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

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

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

### **SUMMARY OF THE CHARGES**

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

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

### **APPELLANT’S CONTENTIONS**

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

- The firm does not have a sophisticated POS system so is unable to provide details for the flagged transactions;
- Only 11 of the 19 charged transactions in Attachment 1 occurred on the same day and the majority of transactions occurred in excess of an hour apart. The majority of the firm’s customers live within walking distance in an underserved market so it is not uncommon for customers to make frequent trips in a single day;
- Receipts and invoices are provided for purchases during the December 2020-April 2021 timeframe that show more than \$23,000.00 in purchases which when a 30 percent markup is applied would equate to over \$30,000.00 in sales. Receipts and invoices for August 2021 are also provided showing purchases of more than \$9,000.00 showing that food stock is sufficient to justify the flagged transactions; and,
- This is the first time the firm is alleged to have violated SNAP regulations and there have been no prior actions by FNS to warn the firm about the possibility that violations were occurring. Accordingly, it is requested that the disqualification action be reconsidered as

a permanent disqualification is an extreme penalty for the alleged violations.

Appellant submitted receipts and invoices for inventory purchases 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 May 23, 2017. The record indicates that in reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during a March 5, 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 small gas station convenience store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services. The store primarily stocked traditional American products and had no ethnic or specialty items.
- The store visit report and photos showed no shopping carts or hand baskets 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 outside of cases of bottled water.
- 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 an opening set into a plastic storage wall that was approximately 1.5 feet deep by 1.0 foot wide with many displays on both sides leaving a very limited

area for customers to place their purchases. There also were stacks of two liter soda bottles directly in front of the checkout making it more difficult to reach the counter. The very small checkout area would make it problematic to process large orders. The checkout area had one cash register, one POS device, and an optical scanner as confirmed by the store cashier.

- The firm had a very limited stock of relatively inexpensive staple foods that also included single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, other drinks, and many ineligible items.
- The firm had no fresh or frozen unprocessed meat or seafood, no dried seafood, an extremely limited quantity and variety of processed meats and seafood (hot dogs, two turkey kielbasa sausages, two small packages of bologna lunch meat, jerky, and canned meat/poultry (one small canned ham, two canned tuna, five canned luncheon meat (pork)), no salamis, no deli meats, no bacon, no brown and serve sausages, no frozen entrees, no frozen dinners, no eggs, no fresh or frozen fruits or vegetables, no dried fruits or vegetables, packaged nuts, 100 percent fruit juices, no 100 percent vegetable juices, no fruit cups, four canned soups, an extremely limited stock of canned and packaged staple food items, four small packages of cheese, no cheese sticks, no deli cheeses, no cream cheese, no large containers of yogurts, no single serving yogurt, no single serving yogurt drinks, no margarine, three butter, two sour cream (French Onion dip), fresh milk, no single serving containers of fresh milk, single serving milk drinks, no canned milk, no shelf staple milk, no coconut milk, no soy milk, no Lactaid milk, no powdered milk, no half & half, five bread, no rolls, no croissants, no tortillas, no taco shells, no tostadas, no pitas, no corn meal, three AP flour, sugar, no brown sugar, no rice, one box of cold cereal, single serving cold cereal, no hot cereals, many single serving noodle soups, no canned pasta, no single serving pasta, one box of dry pasta, no dry noodles, no pancake mix, no mac&cheese, no single serving size mac&cheese, no baking mixes, many Hot Pockets, no Lunchables, no frozen burritos, several single serving frozen heat n' eat foods, no cooking oil, no olive oil, no honey, no coffee, no tea, no cocoa, no baby foods in jars, no baby cereals, no infant formula, no baby juices, no diapers, and only two items priced for five dollars or more.
- Ineligible items included: gasoline, tobacco, smoking accessories, vape pens, lottery, alcohol, ATM, hot drinks, health and beauty items, household products, paper products, hats, clothing, incense, knives, jewelry, etc. while accessory foods included: many un/carbonated drinks, many snacks, baked goods, a large stock of candy, ice cream, no single serving ice cream, condiments, no spices, no cooking oil, no olive oil, no baking mixes, no honey, sugar, no brown sugar, no coffee, no tea, and no cocoa.
- The firm's hours of operation were open 6:00 AM-2:00 AM daily.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Many food items were individually priced. The FNS store visit report, completed in conjunction with the store clerk, showed that most food prices end in .x9 cents. A price ending in .x9 cents is a common pricing structure for stores of this type. The FNS store visit report normally lists the five or six most expensive food items costing more than \$5.00 for sale in the store, but there were only two items at the Appellant firm: more than 10 units of 12 pack sodas priced at \$6.00 and two pints of Hershey ice cream priced

at two for \$6.00. This listing of the most expensive items was provided by the store clerk during the store visit.

- The firm was not a WIC vendor and did not stock any baby foods, cereals, juices, or formula.
- The store visit report and photos noted that the store was poorly lit.
- A previous FNS store visit was conducted on May 15, 2017, for the purposes of determining if the store had a sufficient quantity and variety of staple food stock to be authorized as a SNAP retailer. The store was much better stocked with a greater quantity and variety of staple foods, better lit, and more organized during the initial visit.

### **Multiple Transactions in Unusually Short Time Frames**

This Attachment documents 39 individual transactions in 19 sets of two or more transactions conducted by 14 different households in a short period of time. Individual transaction amounts range from \$24.58 to \$191.00 with 29 transactions exceeding \$50.00 and 10 transactions for \$100.00 or more. There are transaction set totals as high as \$231.79, \$214.21, \$212.91, \$200.28, \$197.27, \$193.78, \$154.17, \$144.63, \$134.89, \$127.38, \$126.02, \$114.00, \$111.16, \$109.86, \$106.68, \$101.93, and \$100.92 to list the highest dollar value sets. The dollar amounts of subsequent transactions in each set are substantial and equal or exceed \$24.58 in each of the 19 sets with subsequent purchases exceeding \$40.00 in 16 sets and \$100.00 in two sets. The span of time for transaction sets ranges from 102 seconds to more than 44 hours with eight of the 19 sets occurring over multiple days. Only three of the 19 transaction sets occur in under one hour and 33 minutes. One set is comprised of three individual transactions while the remaining 18 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 included an unusually high number of transactions ending in a same cents value such as seven transactions ending in .89 cents and five ending in .79 cents. It is unusual and suspicious that nearly one-third of the 39 transactions in this Attachment end in either .89 or .79 cents. 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 clerk 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 repeating ending cents values and its two most expensive items were 12 packs of soda priced at \$6.00 and two pints of Hershey's ice cream for \$6.00. It is unclear how so many transactions between \$24.58 and \$191.00 could routinely end in these same repeating ending cents values considering the .x9 pricing plan and available stock.

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 shopping together and making separate purchases using the same EBT card in quick succession as 16 of the 19 transaction sets occur in one hour and 33 minutes or more time. Contrary to Appellant, it makes no sense that a household would conduct as many as three 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 \$24.58 with subsequent purchases exceeding \$40.00 in 16 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 \$75.18 or more when the comparable average convenience store SNAP transaction amount in Mahoning County during the review period was \$9.12. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby 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 analyzed received its monthly allotment of \$204.00 and shopped at a convenience store located 1.16 miles away spending \$12.00. Later that same day this household conducted two transactions (\$104.89 and \$30.00) totaling \$134.89 at the Appellant firm. The very next day this household spent \$29.83 at a super store located 1.49 miles from Appellant's location, \$3.00 at a dollar store located 2.34 miles away, and \$7.47 at a supermarket located 2.34 miles away before returning to the Appellant firm and spending \$12.98. This household conducted a total of 13 transactions at the Appellant firm during the six month review period while conducting 26 transactions at three super stores and one supermarket all located in a cluster from 1.49-3.65 miles north of the Appellant firm. Common sense dictates that this household most likely resided in or near this cluster and travelled past the larger stores where it regularly shopped 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. It is inexplicable, based on the Appellant firm's very limited stock of staple foods and lack of any unique food items, that any SNAP household would regularly spend \$50.00-\$144.00 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 Appellant 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.

A second household shopped at super store located 5.43 miles away from Appellant's location spending \$71.66 and two days later conducted two transactions (\$50.79 and \$50.13) totaling \$100.92 at the firm. This household conducted a total of 15 transactions at the Appellant firm during the six month review period while conducting 17 transactions at a super store located 5.43 miles from the firm and 13 transactions at a dollar store located 5.42 miles away indicating that this household likely resided in this area and was traveling away from its regular shopping area to conduct suspicious transactions at Appellant's small convenience store with a very limited quantity and variety of staple foods. This clearly shows that this household had ready access to transportation and did not consider the Appellant firm to be its primary grocer. It is inexplicable, based on the Appellant firm's very limited stock of staple foods and lack of any unique food items, that any SNAP household would spend in excess of \$100.00 in legitimate purchases of eligible food items on five different occasions as well as multiple smaller transactions exceeding \$40.00 when it was shopping at a far better stocked super stores and supermarkets before and after purchases at the Appellant 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.

It is further noted that the number of "Multiple transactions in unusually short time frames" in this Attachment decreased drastically during the five months following the firm's receipt of the FNS charge letter. Specifically, the number of individual transactions dropped from 39 to 7, a decrease of 82.05 percent while the number of transaction sets decreased from 19 to three, a

decrease of 84.21 percent. The significant decrease in these transactions is substantial evidence that the unusual and suspicious transactions at the Appellant firm during the review period can most likely be attributed to the trafficking of SNAP benefits.

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 204 individual EBT transactions ranging from \$34.60 to 202.290 with 139 transactions equaling or exceeding \$50.00 and 41 equaling or 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 small convenience store offering a very 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 \$9.12 for this store type in Mahoning County during the review period. This is unusual and indicative of trafficking.

This Attachment also includes an unusually high number of transactions for the exact same dollar amount such as five transactions for \$101.89, three transactions for \$100.00, three transactions for \$60.00, four transactions for \$50.79, five transactions for \$50.00, and three transactions for \$39.89 in addition to multiple pairs of identical transactions that are not supported by store inventory or pricing structure. Further, this Attachment shares the same unusual and suspicious pattern of an unusually high number of transactions ending in a same cents value such as 27 transactions ending in .89 cents and 18 ending in .79 cents. It is unusual and suspicious that nearly one-quarter of the 204 transactions end in either .89 or .79 cents.

When many transactions are of the same amount, 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 cashier 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 dollar amounts. The charge of trafficking is further supported by the Appellant firm's pricing plan that has most items individually priced with prices ending in .x9 cents. Due to the lack of expensive food items and the pricing plan, it would be nearly impossible for multiple households to randomly select eligible food items equaling these exact same dollar amounts let alone ending in the same cents amounts as noted in both of the charge letter Attachments.

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 \$81.04 at the Appellant firm and four hours later spent \$30.48 at a super store that was its primary grocery and was located 1.49 miles from the Appellant firm. This same household had high dollar value transactions at the Appellant firm in each month of the review period that were preceded or followed by transactions at much larger stores of comparable or smaller dollar values. This makes no sense since the Appellant firm carried no unique food items and had the same eligible food stock that could be found at any of the larger stores the household regularly shopped at. It is further noted that six of the household's 15 transactions at the Appellant firm ended in .79 or .89 cents. As previously discussed, the prevalence of transactions ending in specific cents amounts, such as 0.79 or .89 cents, is unbelievable based on the firm's inventory and pricing structure making it more likely than not that these were instances of trafficking at the Appellant firm.

A different household spent \$100.00 at the Appellant firm and the next day spent \$10.47 at a super store located 1.49 miles away that was its primary grocery store. The following day it returned to the Appellant firm spending \$40.09. In a subsequent month, this household spent \$82.98 in two transactions at two super stores located 1.49 and 3.65 miles away before conducting two transactions (\$1.89 and \$102.79) at the Appellant firm in the span of 48 seconds. In a different month this household spent \$65.73 at a super store located 1.49 miles away and less than three hours later spent \$30.79 at the Appellant firm.

A third household shopped at two super stores located 1.49 and 3.65 miles away spending \$3.89 at the closest store and \$4.02 at the farthest. Less than two hours later this household travelled to the Appellant firm and conducted two transactions (\$3.00 and \$50.73). In a subsequent month it spent \$177.98 at a supermarket located 6.05 miles away and less than one hour later spent \$83.79 at the Appellant firm.

Appellant offered no justification as to why households would spend significant amounts of their limited SNAP benefits at Appellant's small convenience store with a very 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 one 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 a much smaller and minimally 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 a very limited stock of staple foods and no shopping carts 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 five comparably sized or larger authorized retail food stores within a 0.99 mile radius of Appellant's location that included a large grocery store and a medium grocery store in addition to three convenience stores. There were many larger stores located slightly 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 minimally stocked convenience store.

The difference in the total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount for Mahoning County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 154.48 percent larger than like type Mahoning County stores and its total SNAP transaction count is 155.67 percent larger than the County average while its average SNAP transaction amount is nearly identical to the county average. The significantly higher dollar volume and SNAP transaction count would be the expected result of a retail store dividing a large number of high dollar trafficking transactions into smaller dollar value transactions in an attempt to avoid suspicion. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibited the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the

same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous Attachments do not represent legitimate food purchases. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

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 does 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 March 5, 2021, FNS store visit report and photos would show that the firm had a very 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 high 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 very limited 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. Accordingly, Appellant's claims regarding the store being well-stocked are not sufficient to prove the legality of the charge letter transactions.

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 \$202.29 in a single transaction at a small convenience store with a very limited stock of staple foods, that is not optimized for bulk sales, and that is located in proximity to superiorly stocked competitor stores. Even if a hypothetical SNAP household consisted of a large number of members, it would still be much more likely to make high dollar purchases at larger competitor stores, such as supermarkets or super stores, that would offer a superior quantity and variety of stock, lower pricing, and ease of both shopping and checkout.

Information obtained during the March 5, 2021, FNS store visit shows that the Appellant firm offered a very 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, an extremely limited quantity and variety of processed meats and seafood (hot dogs, two turkey kielbasa sausages, two small packages of bologna lunch meat, jerky, and canned meat/poultry (one very small canned ham, two canned tuna, and five canned pork luncheon meat), no frozen entrees, no frozen dinners, no eggs, no

fresh or frozen fruits and vegetables, and an extremely limited stock of canned and packaged staple food items. The fact that gasoline, tobacco, smoking accessories, vape pens, lottery, alcohol, ATM, hot drinks, health and beauty items, household products, paper products, hats, clothing, incense, knives, jewelry, 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. The firm also had a very 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 a very 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.

The Office of Retailer Operations and Compliance analyzed the invoices provided by Appellant after excluding any ineligible items on individual invoices, any invoices dated outside the review period, and any incomplete or illegible invoices. A 30 percent markup provided by counsel was applied to the invoice total of \$22,481.96 resulting in potential eligible food sales of \$29,226.55. SNAP redemptions for the same period amounted to \$67,487.14 showing that the firm did not have sufficient food inventory to support its SNAP redemptions during the review period. This analysis did not consider any credit/debit/cash sales which would further widen the \$38,260.59 gap between the inventory and SNAP redemptions. The review also showed that many of the eligible items purchased were inexpensive accessory foods such as snacks, soda and other beverages, and candy in addition to many ineligible items (tobacco products and accessories, vape products, hemp products, auto supplies, health and beauty products, and other nonfood items).

SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on August 4, 2021. Following the receipt, the volume of SNAP redemptions at the Appellant firm decreased 52.71 percent from July 2021 to September 2021 while the number of SNAP transactions decreased 47.52 percent and the average dollar amount of SNAP transactions decreased 9.95 percent during the same period. A pronounced fluctuation in SNAP redemptions following 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. This substantial decrease in sales volume, the number of transactions, and the average transaction amount is substantial evidence of suspicious transactions at the Appellant firm that can most likely be attributed to the trafficking of SNAP benefits.

It is further noted that the number of “High Dollar Value Transactions” in this Attachment decreased drastically in the five months following the firm’s receipt of the FNS charge letter.

Specifically, the number of individual transactions dropped from 204 to 73, a decrease of 64.22 percent and the largest transaction dropped from \$202.29 to \$152.77. The significant decrease in these transactions is substantial evidence that the unusual and suspicious transaction patterns at the Appellant firm during the review period can most likely be attributed to the 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.

Regarding Appellant's contention that FNS took any prior actions to warn the firm of the possibility that violations were occurring, there are no requirements in existing FNS regulations that require stores suspected of trafficking or misusing SNAP benefits be provided with a written or verbal notification that violations of SNAP regulations may be occurring and the potential penalties. Warning letters are issued in those situations where the SNAP violations are of a limited nature that would not warrant a disqualification and therefore would not have been appropriate in this situation.

The owner 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.

It is noted for the record that the August 3, 2021, FNS charge letter stated that, “If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter. No extension of time can be granted for making a request for a CMP or for providing the required documentation.”

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 county and state.

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

## **RIGHTS AND REMEDIES**

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

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

ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

May 8, 2023