

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

Corner Store Mart Inc.,

Appellant,

v.

Case Number: C0253418

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated January 23, 2023, the Retailer Operations Division informed the Appellant that Corner Store Mart Inc. was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on January 25, 2023.

In a response to the Retailer Operations Division of January 26, 2023, the Appellant replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated February 2, 2023, informing the Appellant that Corner Store Mart Inc. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In an email correspondence of February 7, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated February 10, 2023.

STANDARD OF REVIEW

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

CONTROLLING LAW

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

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

SUMMARY OF CHARGES

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

- There were multiple transactions made from the accounts of individual households within a set time period;
- The bulk of the households' remaining benefits were depleted within short timeframes; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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

APPELLANT'S CONTENTIONS

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

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

- The Appellant has been in business and an authorized SNAP retailer since 2019.
- The Appellant serves the community and runs the store ethically with no intention of committing any violations or crimes.
- The Appellant has never violated any laws related to Section 271.2 and 278.6(e)(1).
- The Appellant's transactions are based on the sale of qualified merchandise.
- The Appellant holds itself as a fully functioning grocery store.
- Most of the Appellant's customers buy groceries for their entire household as would a customer at a grocery store.
- The Appellant has invested a significant amount of time in the community by ensuring the store always carries a large variety and stock of inventory to accommodate all customers.
- Since the store visit was conducted the Appellant has made changes to the store by adding more inventory such as frozen and cold seafood, chicken, beef, and additional chips like Doritos, Takis, and Baken-ets. The Appellant has also added additional candy bars like Bimbo, Herr's, Munchies, and Marlow, additional ice cream products, and additional choices of canned meats, fruits, and vegetables.
- According to the U.S. Census Bureau, the Appellant is located in an area with a poverty rate of around 21 percent. The Appellant is located opposite to numerous low-income apartments and housing with a substantial number of people relying on EBT to survive. The store sits close to multiple public institutions such as schools, colleges, and parks. Students from nearby schools frequently come to the Appellant both before and after school for snacks and drinks. Lastly, individuals who go to the park like the Appellant for its variety and convenience.
- The store's cash register receipts do not show the individual items purchased but do show the date, time, and the transaction amounts.
- Many families share the same SNAP card and make individual purchases in a short period of time.
- Furthermore, most of the large transactions occur towards the early days of the month due to the fact that EBT is often distributed during that time.
- A government report on SNAP shopping patterns indicates that "on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefits. By the first week, the average household had redeemed over half of its benefits, and by the second week, over three-quarters of it (*Moms 6 INC., v. Retailer Operations Division*)". Hence, the official USDA report shows that the large transactions that have taken place at the Appellant represent accurately how SNAP customers' shopping habits are.

- The COVID-19 pandemic has contributed to the large and multiple transactions in two ways. First, more and more individuals got qualified for SNAP benefits during the pandemic. Many SNAP clients' EBT amounts also were increased as the government was looking to accommodate individuals' needs during the pandemic.
- Secondly, towards the end of the pandemic, customers have been coming into the store much more frequently to purchase foods and drinks for social gatherings.
- The Appellant is especially known for selling items in bundles and cases. For example, the store sells cases and packs of chips and provides discounts if SNAP customers buy multiple items. Thus, the frequent bulk and large transactions are adequate with the current circumstances of the community being more active than before.
- The Appellant has never attempted to ask questions or restrict customers' purchases since USDA policy has specifically stated that retailers are not allowed to limit or interfere with purchases of their customers. The Appellant simply tries to abide by USDA policies and does not question customers' shopping habits.
- SNAP customers of the Appellant take measured approaches when they purchase items with their SNAP cards. Most, if not all, EBT customers are struggling individuals who purchase a large number of items without doing the necessary budgeting. In many instances customers will have no clue how much money they have on their SNAP cards. As a result, customers often choose to purchase a small number of groceries to check whether they have enough money to make further purchases. If the initial purchases go through, customers consequently make second purchases. This measured approach is a common practice at the Appellant and can explain why multiple transactions are frequent.
- The claim that the Appellant "conducted EBT transactions that are large based on the observed store characteristic and recorded food stock" is a false claim as the store is known in the community for its large inventories. See Exhibit (Note: No Exhibit was forwarded for review).
- The Appellant has a very fast store turnover, meaning inventories come in and out in around two weeks. As the Appellant also carries many products with expiration days, the Appellant does not carry a large inventory at once. Instead, multiple inventories come into the store throughout each month.
- This is the first time that the Appellant has been cited for SNAP violations.
- The Appellant shows no intention of allowing such violations to happen again.
- A permanent SNAP disqualification would impose a significant hardship on area customers. The Appellant is rather unique within the community not only because it sells unique items such as fresh delis, cold cuts, and fresh meats and vegetables, but also because it provides an overall good shopping experience for SNAP customers. There are a total of three EBT stores in the community. There is a small seafood market that solely sells seafood products and another small retail store that sells mostly meat products. The Appellant is the only store in the community that provides various staple goods such as candy bars and snacks at affordable prices.
- A permanent SNAP disqualification would impose a financial hardship on the Appellant.
- The Appellant has implemented an effective compliance program to prevent violations of the SNAP regulations Section 271.2 and meets the eligibility requirements for a CMP under Section 268.6(e)(1).
- The Appellant had implemented a legitimate training program for its employees.
- The Appellant has taken the time and effort to train and enforce SNAP policies by utilizing a multi-step training program that aims to prevent SNAP violations. The Appellant provides USDA handbooks to each employee who spend time reading and learning the rules. After

reading through the guidelines, each employee is asked to scan the QR code at the very end of the booklet and watch the USDA SNAP videos. Upon completion of initial training, each new employee must sign to indicate that he/she fully understands the USDA guidelines and is ready to start working. Each employee must work side by side with the owner or manager for a period of time to ensure they not only learn the rules but also can apply them in a proper setting. It is only after weeks of working with new employees that they are allowed to work alone. The manager also retrain and reevaluates employees' knowledge and performance monthly.

- With regard to Criterion 1, since being authorized as a SNAP retailer, the owner has been active in ensuring full compliance with his employees and their obligations to FNS. A photocopied booklet is provided to each employee and issues and concerns regarding EBT processing are addressed as questions and issues arise. The Appellant's compliance policy states the following: (1) There is no exchange for cash for EBT card swipes; and (2) and only sell qualified EBT grocery items to your customers.
- The Appellant has a training policy in place for its employees. Using the url: [http://www.fns.usda.gov/sites/default/files/Retailer Training Guide.pdf](http://www.fns.usda.gov/sites/default/files/Retailer%20Training%20Guide.pdf), the Appellant has provided in-store training and a copy of the manual to all employees and store operators. The contents of the manual are discussed and reviewed with employees and partners of the business on a semi-annual basis. Each employee is reminded by the Appellant to never engage in the following: (a) Giving back cash in return for EBT purchases; (b) Disallowing sales to known friends of the card user if it appears as though the card user is outright paying for the groceries of a person that is not part of their household; and (c) Disallow sales on unqualified EBT items.
- With regard to Criterion 2, the firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter.
- With regard to Criterion 3, the firm developed and instituted an effective training program as specified in Section 271.2. The training program implemented by the Appellant includes: A review of the FNS handbook with each new employee and instructions to call USDA or the store owner if employees have any questions.
- With regard to Criterion 4, firm ownership was not aware of, did not approve of, did not benefit from or was not in any way involved in the conduct or approval of the trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm.

In support of these contentions, the Appellant, through counsel, submitted 24 photos of current food stock.

ANALYSIS AND FINDINGS

SNAP Authorization

During the review period of May 2022 through October 2022, Corner Store Mart Inc. was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on June 25, 2019, the owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the

SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Observations

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 17, 2022 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,484 square feet in size with approximately 100 square feet of storage area outside of public view;
- Had storage coolers and freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space which was surrounded by a plastic barrier with only a small place to put items for purchasing;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Had an optical scanner;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$.x9 or \$.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- Did not stock a profusion of specialty or ethnic food items;
- Had empty/broken/unused coolers/freezers;
- Had empty shelves;
- Firm was not a WIC Program vendor; however, it did stock a few units of infant formula to include Similac Advance at \$29.99 per 23.2 ounces (1 unit in stock); Enfamil Sensitive at \$29.99 per 19.5 ounces (1 unit in stock); and Similac Advance at \$14.99 per 12.4 ounces;
- Only three expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock which were Grobbels point cut corned beef brisket at \$20.69 per 2.3 pounds (1 unit in stock); Grobbels flat cut corned beef brisket at \$15.60 per 2.36 pounds (1 unit in stock); and Pepsi products at \$5.99 per 15/12 ounces;
- No fresh meats, poultry, or seafood;
- Had a minimal variety and amount of frozen unprocessed meats and poultry;

- No frozen seafood stock;
- Had a limited variety and amount of frozen food stock to include such items as meals and pizza;
- Had a kitchen; however, hot foods were not sold;
- Did not have a deli or prepared food area and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, meat jerky, and canned fish;
- Dairy included infant formula, margarine, butter, and cheese;
- No fresh produce stock;
- Other staple foods available for purchase included such items as juice, nuts, pasta/ramen, rice, flour, baking mix, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, snack foods, and sugar; and
- Ineligible nonfood items included health and beauty aids, paper products, household items, tobacco products, automotive supplies, incense, lottery tickets, and alcohol.

Charge Letter Attachments

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

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

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

This charge letter Attachment documents 84 sets of transactions (194 total transactions) that total \$13,124.67 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 43 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that it has never attempted to ask questions or restrict customers’ purchases since USDA policy has specifically stated that retailers are not allowed to limit or interfere with

purchases of their customers. The store has invested a significant amount of time in the community by ensuring the store always carries a large variety and stock of inventory to accommodate all customers. Since the store visit was conducted the Appellant has made changes to the store by adding more inventory. Towards the end of the pandemic, customers have been coming into the store much more frequently to purchase foods and drinks for social gatherings. Furthermore, most of the large transactions occur towards the early days of the month due to the fact that EBT is often distributed during that time.

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

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a limited food stock, no fresh produce stock, no fresh meats, poultry, or seafood, a minimal variety and amount of frozen unprocessed meats and poultry, no frozen seafood, and a limited variety and amount of frozen food stock. The store visit observations indicate that the subject firm is a convenience store without unique food stock, floor plan, or other characteristics. The Appellant's transaction activity is unusual as every transaction in each set of transactions range from \$20.00 to \$157.32 and the average convenience store transaction in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period was 5 U.S.C. § 552 (b)(7)(E) and 5 U.S.C. § 552 (b)(7)(E) for 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The second, third, and subsequent transactions in each set are too large to consist of forgotten items.

The store visit report, which was completed in collaboration with and signed by the store owner, and store visit photos as well as the stock photos provided by the Appellant offer no explanation as to why SNAP customers would routinely shop at Corner Store Mart Inc. multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items. The food stock photos provided by the Appellant show a larger quantity and variety of stock than was observed during the store visit. It is likely that this additional store stock was acquired after the receipt of the charge letter in an attempt to explain the suspicious transactions and patterns noted in the charge letter. It is important to note that even "well stocked" stores will sometimes engage in trafficking, so the food stock shown in the Appellant's photos provides no definitive explanation for the suspicious transactions and patterns noted in the charge letter.

In addition, the store visit report and photos indicate that there was only one cash register and one EBT POS device for use in ringing-up SNAP transactions, one checkout counter with limited check-out counter space which was surrounded by a plastic barrier with only a small place to put items for purchasing, no shopping baskets or carts available to customers for transporting food within the store, and no conveyor belts to expedite high dollar or rapid consecutive purchases. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods

which would entice SNAP customers to utilize the subject store over other area authorized retail stores. No evidence was advanced supporting the Appellant's claim that it provides discounts if SNAP customers buy multiple items.

As to whether or not co-shopping and/or sharing of SNAP cards actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping and/or sharing of SNAP cards is particularly common among SNAP recipients in 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If co-shopping and/or sharing of SNAP cards truly impacted Corner Store Mart Inc. as the Appellant suggests, it would stand to reason that co-shopping and/or sharing of SNAP cards would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

The Appellant contends that there are a total of three EBT stores in the community. The Appellant is the only store in the community that provides various staple goods such as candy bars and snacks at affordable prices. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 19 SNAP authorized retailers located within a 1.0 mile radius of Corner Store Mart Inc., including 1 large grocery store, 2 medium grocery stores, 3 combination grocery/other stores, and 13 other convenience stores, that could meet the nutritional needs of SNAP customers. In addition, there were 53 SNAP authorized stores located within a 2.5 mile radius of the subject firm, including 2 super stores, 2 supermarkets, 2 large grocery stores, 5 medium grocery stores, 15 combination grocery/other stores, and 27 other convenience stores. Some of these authorized SNAP stores are larger than Corner Store Mart Inc. and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

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

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

Bulk of SNAP Benefits Exhausted (Charge Letter Attachment 2)

This charge letter Attachment documents 46 suspicious transaction sets (67 total transactions) which ranged from \$73.14 to \$173.60 and totaled \$4,534.45. These transactions were conducted by 26 different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households.

Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day,

especially in a convenience store with limited stock, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

5 U.S.C. § 552 (b)(7)(E).

A review of the store visit report, which was signed by and completed in cooperation with the store owner, as well as the stock photos indicate that Corner Store Mart Inc. offers a limited stock of SNAP-eligible foods with no fresh meats, poultry, or seafood, a minimal variety and amount of frozen unprocessed meats and poultry, no frozen seafood, a limited variety and amount of frozen food stock, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. The store's inventory contained almost exclusively inexpensive single-serving prepared food items and accessory foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

The Appellant contends that customers make measured approaches to purchasing groceries based on their uncertainty regarding EBT balances. Many SNAP customers purchase a large number of items without doing any necessary budgeting. Many do not know how much money they have left on their card. If an initial purchase goes through, the customer makes a second purchase. However, the EBT point-of-sale machine is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances. Therefore, it is not necessary for customers to make a purchase just to find out what they have on balance on their SNAP benefits accounts.

The Appellant did not provide any compelling justification or evidence as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at Corner Store Mart Inc. or evidence that all of the irregular transactions cited in this charge letter Attachment were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions (Charge Letter Attachment 3)

This charge letter Attachment documents 459 SNAP transactions, as large as \$157.32, that total \$32,746.53. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that it holds itself as a fully functioning grocery store. Most of the Appellant's customers buy groceries for their entire household as would a customer at a grocery store. The store is known in the community for its large inventories. The Appellant is especially

known for selling items in bundles and cases. The Appellant has a very fast store turnover, meaning inventories come in and out in around two weeks. As the Appellant also carries many products with expiration days, the Appellant does not carry a large inventory at once. Instead, multiple inventories come into the store throughout each month.

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

The store visit observations indicate that the Appellant is a convenience store which measures approximately 1,484 square feet in size with approximately 100 square feet of storage area outside of public view and the firm has some storage coolers and freezers. The stock of SNAP-eligible foods is limited with no fresh meats, poultry, or seafood, a minimal variety and amount of frozen unprocessed meats and poultry, no frozen seafood, a limited variety and amount of frozen food stock, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. In addition, the store had empty/broken/unused coolers/freezers and empty shelves.

The FNS store visit report, which was completed in collaboration with and signed by the store owner, as well as the store visit photos indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. In addition, the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

The store visit observations also indicate that there were only a few expensive eligible foods in stock, the majority of which were in limited quantities, that would account for these large amounts. Specifically, the six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Similac Advance infant formula at \$29.99 per 23.2 ounces (1 unit in stock); Enfamil Sensitive infant formula at \$29.99 per 19.5 ounces (1 unit in stock); Similac Advance infant formula at \$14.99 per 12.4 ounces; Grobbels point cut corned beef brisket at \$20.69 per 2.3 pounds (1 unit in stock); Grobbels flat cut corned beef brisket at \$15.60 per 2.36 pounds (1 unit in stock); and Pepsi products at \$5.99 per 15/12 ounces.

It is important to note that while the Appellant carried a few units of infant formula, the majority of households that qualify for WIC Program benefits also qualify for and are SNAP recipients. In most cases, these households utilize their WIC Program benefits to purchase infant formula and infant foods in lieu of their SNAP benefits in order to save their SNAP benefits for other needed food items. The Appellant is a not WIC Program vendor and therefore, it is unlikely that WIC Program recipients would routinely or consistently choose to utilize their SNAP benefits to purchase infant formula and foods at the subject firm.

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

While the Appellant firm may be located in an area with households that qualify for SNAP benefits and near multiple public institutions such as schools, colleges, and parks, and the Appellant's sales may have increased due to EBT customers receiving additional SNAP benefits during the COVID-19 pandemic, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

5 U.S.C. § 552 (b)(7)(E).

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

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

Compliance History

The Appellant is correct that the firm has no previous history of SNAP program violations or warnings. However, a record of participation in the SNAP with no previously documented instance

of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a nonmanagerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

Corrective Action

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

Customer Hardship

With regard to the Appellant’s contention that a SNAP disqualification would impose a hardship on area SNAP customers, 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Financial Hardship

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

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

Past Administrative Review

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

CIVIL MONEY PENALTY

In the January 23, 2023 charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their charge letter.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the February 7, 2023 request for administrative review (i.e., past the 10 day required timeframe of receipt of the January 23, 2023 charge letter), the Appellant, through counsel, requested consideration for the imposition of a trafficking civil money penalty in lieu of permanent disqualification. The Appellant contends that the firm implemented a legitimate training program for its employees and an effective compliance program to prevent violations of the SNAP prior to the occurrence of the SNAP violations.

However, the record supports that the Appellant did not submit a timely request and timely substantial evidence, as required by the regulations, to meet the criteria for a trafficking CMP in lieu of permanent disqualification. Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

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

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

RIGHTS AND REMEDIES

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

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

LORIE L. CONNEEN
ADMINISTRATIVE REVIEW OFFICER

April 18, 2023