

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

Five Star Mart Inc.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0257645

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Five Star Mart Inc. (hereinafter “Appellant”).

ISSUE

The issue accepted for review is whether the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Five Star 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

Five Star Mart Inc. was initially authorized to participate in SNAP on May 18, 2021. In a letter dated January 10, 2023, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of February 2022 through July 2022 and information obtained during a visit to the store by an FNS contractor on June 23, 2022. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10

days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Agency records show that Appellant did not respond to the charge letter.

After further evaluating the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 24, 2023. This letter informed Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In an email dated February 3, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption....

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

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(b)(2)(ii) states, in part:

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(e)(1)(i) states:

[FNS] shall...disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(i) states, in part:

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

SUMMARY OF CHARGES

FNS charged Five Star Mart Inc. with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for February 2022

through July 2022. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

- **Charge Letter Attachment 1:** Multiple transactions made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 2:** EBT transactions that were large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

- The charge letter does not detail or provide evidence of trafficking.
- There is no evidence of trafficking.
- Appellant requests the store be supervised for a period of time because the store has no previous SNAP violations.
- Disqualification would pose a hardship to SNAP participants who rely on the firm.
- Regarding Charge Letter Attachment 1:
 - Customers shop at the firm more than once per day because Appellant is well stocked, convenient for area residents, and sells a variety of grocery and consumer products.
 - Customers complete follow-up transactions for forgotten items or additional needs which is not uncommon.
 - Appellant is the only store in the immediate vicinity that accepts SNAP and provides a variety of products.
 - The length of time between transactions is not unusually short.
 - Frequent visits by a household is not by itself evidence of trafficking.
 - Appellant is not responsible for monitoring SNAP household shopping habits.
 - Appellant is located in an area with many SNAP participants.
 - Given the store's location and stock, it is not unreasonable for a household to make multiple purchases or complete its monthly grocery needs at the store.
 - During the pandemic, households sought out neighborhood stores.
- Regarding Charge Letter Attachment 2:
 - Appellant is well stocked and sells higher priced items.
 - The large transactions are not excessively large.
 - Appellant sells a 24-pack of 12-ounce Red Bull cans for \$79.99 and a 24-pack of 8-ounce Red Bull cans for \$59.99.
 - The purchase of bulk Red Bull and a few other items would easily account for the transactions in this attachment.
 - During the pandemic, households bought in bulk at neighborhood stores.

Appellant provided 15 letters of support signed by customers and approximately 120 pages of inventory invoices to support its contentions.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented and evidence submitted.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the January 10, 2023, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

Evidence of Trafficking

Appellant contends the charge letter does not detail or provide evidence of trafficking. Because there is no evidence of trafficking, a charge of trafficking cannot be assessed against the store.

With regard to these contentions, this review concedes that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

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

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it wishes in order to justify the transaction activity detailed in the charge letter.

This review has thoroughly examined the documentation and information provided by the Retailer Operations Division. From all indications, the Retailer Operations Division obtained the EBT data, found it suspicious compared to other area stores with similar characteristics, and then completed a thorough analysis before concluding that trafficking was likely occurring.

It is important to restate here that in an appeal of adverse action, the onus is on Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. Despite being given a specific list of questionable transactions in the charge letter, Appellant has not offered any compelling evidence, such as itemized cash register receipts or other transaction records, to show that the specific transactions in question were legitimate purchases of eligible food. Based on the suspicious patterns displayed and the other supporting evidence in the file - and in the absence of compelling evidence or explanations for such transaction patterns - the preponderance of the evidence supports that the unusual transactions and patterns cited in the letter of charges are the result of trafficking.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the June 23, 2022, store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the store size, description, and characteristics. The report also described the store's checkout counter space area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than one customer at a time.

The store visit report noted that the store did not offer bulk or package sales, round transactions, or use an unusual pricing structure. The store did not offer telephone or online ordering or delivery. The store had approximately 280 sq. feet of beverage storage at a second location. The six highest priced items identified by the contractor in collaboration with store personnel ranged between \$9.39 for a 3-ounce bag of jerky (eight units in stock) and \$14.99 for a three-pound box of JEM burger patties (one unit in stock). None of the six highest priced items identified had more than eight units in stock. The store did not have shopping baskets or carts available for customer use.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

SNAP Transaction Analysis

The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store, which are considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Oddly within this attachment, there were multiple sets that included transactions with identical totals. Three examples are included below.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Nothing in the store visit report or Appellant's reply appeared to provide an explanation for the repeating transaction totals. Repeating transaction totals in large dollar values, without corresponding packages, bundles, or stock priced at those dollar values, is very unusual and likely indicative of trafficking.

Appellant contends multiple purchases may be because customers made an initial purchase but forgot items or had additional needs. Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total large dollar amounts. Customers sometimes forget an item or see something at the checkout and decide to purchase it after already having completed a transaction. In such instances, it is reasonable to expect the subsequent purchase would be for a nominal amount. This is because it is unusual to find very expensive items positioned at the checkout area, especially in smaller stores. Also, forgotten goods purchased immediately after a prior transaction typically consist of only one or two items. However, the subsequent transactions exceeded any minor amount. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction total. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

Appellant contends the length of time between transactions is not unusually short, and frequent household visits are not evidence of trafficking. Again, while there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to

make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store. Spending sizable portions of one's SNAP benefit allotment in a convenience store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior.

Appellant argued that it is not unreasonable for a household to make multiple purchases or complete its monthly grocery needs at the store, given that it is the only store in the immediate vicinity that accepts SNAP and provides a variety of products. Appellant also stated that it is located in an area with many SNAP participants. Appellant has offered no evidence to support these contentions. The case record shows that the Retailer Operations Division identified seven other authorized retailers within a one-mile radius of Appellant, including a supermarket located 0.15 miles from Appellant.

Appellant, through counsel, has argued that it has no responsibility to control or monitor customer shopping habits. Regarding this contention, retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how often a household visits a store or how much a household may spend at a store at a given time. However, the transactions cited in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive stores – even those competitors who sell similar food items. The transactions identified in the charge letter are not marginally abnormal, but decidedly so.

In a case such as this one, which is based on an analysis of transaction data, an Appellant must prove, through a preponderance of evidence, that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to that provided by the Retailer Operations Division, the agency's determination must be sustained.

Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant contends transactions in this attachment are not excessively large because Appellant is well stocked and sells higher priced items. Specifically, Appellant sells 24-packs of 12-ounce cans of Red Bull for \$79.99 and 24-packs of 8-ounce cans of Red Bull for \$59.99. The purchase of bulk Red Bull and a few other items would easily account for the transactions in this attachment.

Appellant has provided no evidence that it offered bulk Red Bull products in these quantities and noted price points during the review period. According to the store visit report, the firm did not offer Red Bull in these case sizes or prices at the time of the store visit. As previously noted, the contractor report was completed in collaboration with store personnel during the June 23, 2022, store visit. The report noted that Appellant offered just one Red Bull product priced at \$9.38 or more, which was a four-pack of 8.4-ounce cans of Red Bull priced at \$10.56. The only other Red Bull noted in the contractor photographs appeared to be individual can sales. There was no visible signage advertising bulk Red Bull sales in the store visit photographs. A review of the

purchase invoices provided by Appellant did not show the purchase of Red Bull products. While there may have been occasions when Appellant sold Red Bull in larger packages, based on evidence from the store visit and lack of corroborating receipts or invoices, it is more likely true than not true that bulk sales of Red Bull products do not explain the large SNAP transactions that occurred at Appellant.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a convenience store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available SNAP-eligible food was not unique to Appellant and was primarily of a low dollar value or single-serving size. At the time of the store visit, there was no hint that the firm offered bulk, case, or promotional sales.

Within this attachment, was an unusual pattern of repeating transaction totals in high even-dollar amounts. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the contractor report from the June 23, 2022, store visit, the store did not round transactions and did not use an atypical pricing structure. Most product prices ended with “x9” cents. Clusters of transactions in large and even-dollar values without corresponding packages, bundles, stock priced at those dollar values, or a pricing structure that would support those values is very unusual and likely indicative of trafficking.

Based on the store layout, infrastructure, and available inventory, it is not credible that Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. 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 or shopping baskets, especially since larger, better-stocked stores are readily available and in the vicinity of Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its limited counter space. Additionally, there is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items.

As noted earlier, in an administrative review, the burden of proof lies with Appellant to prove by a preponderance of the evidence that the allegations are erroneous, and a reversal of the disqualification is warranted. Absent from Appellant’s argument in this case is compelling evidence to show that the specific transactions in question were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the patterns found in this attachment were likely the result of trafficking.

Competitor Stores:

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed one supermarket, one superstore, and four other convenience stores within the one-mile radius. This review demonstrates that households shopping at Appellant were nearby a larger store that may have lower prices and

better inventory, making it less likely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's convenience store, and that they would do so recurrently.

Household Analysis:

In addition to determining if households had access to other shopping options, the Retailer Operations Division conducted a household analysis to determine if households conducting suspicious transactions at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. These examples included 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Each of the households examined had access to and shopped at larger stores, including superstores and/or supermarkets.

Additional analysis of the households in the charge letter revealed more than 73% conducted a transaction at a large grocery, supermarket, or superstore within two days of a charge letter transaction at Appellant. This shows that the majority of households had access to larger, better stocked stores. Despite this access to larger, better stocked stores, the households conducted multiple transactions in set time frames and/or transactions that were large based on the observed store characteristics and recorded food at Five Star Mart Inc.

Comparison with Similarly Situated Convenience Stores:

The Retailer Operations Division compared Appellant's transaction activity to the transaction activity of four nearby convenience stores identified as carrying similar or better stock. Appellant had substantially more SNAP transactions meeting the parameters of multiple transactions from the same household in set time frames and transactions that were large based on the observed store characteristics and recorded food.

Appellant's inventory, characteristics, and location do not explain why Appellant had more frequent transactions meeting the parameters in the charge letter. If Appellants arguments about store location or SNAP household shopping patterns due to the pandemic were causing the questionable transactions at the subject store, it would be expected that similar patterns would exist at other nearby convenience stores. However, that is not the case.

Invoices

Appellant submitted approximately 120 pages of purchase invoices to support its contention that the charge letter transactions resulted from eligible food sales, not trafficking. However, the invoices provided are insufficient to demonstrate this. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, Appellant's total SNAP transactions during the review period were much higher than this amount. This also does not account for any non-SNAP purchases of food items at Appellant. In sum, the invoices do not explain the questionable transactions at Appellant.

No Applicable Mitigating Factors

Appellant asserts that this is the first time there has been an issue related to SNAP. A record of program participation with no documented previous violations, however, does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

Appellant requests a period of supervision. 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 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, § 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.

No Undue Hardship to SNAP Participants

Appellant asserts that disqualification would be a hardship to SNAP households who rely on the store. To support this contention, Appellant submitted 15 customer statements attesting that the neighborhood and customers would be negatively affected if Appellant was disqualified.

With regard to this contention, some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the disqualification. Section 278.6(f)(1) of SNAP regulations provides for Civil Money Penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating retail food store in the area to meet their needs. However, this regulation also sets forth the following specific exception: “A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.” Because the matter at hand involves a permanent disqualification, this CMP provision is not applicable.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that Appellant firm was not eligible for a CMP in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The case record shows that Appellant did not request a

trafficking CMP or provide any evidence of a compliance policy or training program within the required 10-day period. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Five Star Mart Inc. from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by Appellant. Likewise, Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against Appellant, Five Star Mart Inc., under the ownership of Mathews Sabu, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

AMIE CHURCHILL
Administrative Review Officer

April 21, 2023