

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

**Jandinga Deli Grocery Store Corp,**

**Appellant,**

**v.**

**Case Number: C0258366**

**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 Jandinga Deli Grocery Store Corp (hereinafter “Jandinga Deli Grocery Store Corp” 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 Jandinga Deli Grocery Store Corp.

**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 December 14, 2022, the Retailer Operations Division informed the Appellant that Jandinga Deli Grocery Store Corp 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 December 15, 2022.

In a response to the Retailer Operations Division of December 27, 2022, the Appellant, through counsel, responded to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination. In the response, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Jandinga Deli Grocery Store Corp pursuant to the Freedom of Information Act (FOIA). The Retailer Operations Division contacted counsel by email on February 2, 2023 and informed him that the FOIA request must be submitted to the FNS FOIA office at SM.FN.RODFOIA@usda.gov.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated February 7, 2023, informing the Appellant that Jandinga Deli Grocery Store Corp 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 9, 2023, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated February 17, 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 contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

## **SUMMARY OF CHARGES**

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

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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

### **APPELLANT'S CONTENTIONS**

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

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

- The Appellant requests dismissal of the permanent SNAP disqualification determination.
- All employees deny having committed the alleged violations.
- The charge letter is insufficient to establish trafficking as defined in Section 271.2 of the SNAP regulations.
- The investigation consisted entirely of a computer-based summarization of select SNAP transactions at the Appellant during a six month review period. It did not entail any visit to the premises by any investigator nor any inquiry or review of any of the challenged transactions.
- At best, data retrieved by USDA from its computer records might serve as a basis for conducting an investigation. But the raw numbers, absent investigation of the business or of the benefit holders cannot in and of itself determine the outcome and vitiate the need for investigation.
- The principles of due process require that a business faced with a penalty that encompasses exclusion from a government program in which it has been participating at least be accorded a hearing prior to any termination.
- With regard to the transactions documented in Attachment 1, a close look at the transactions log shows that the majority of these "grouped" transactions took place over several hours or over two separate days.
- There is no restriction on how frequently account holders may shop and there is no requirement on the business to attempt to "police" account holders' shopping habits pursuant to any unstated policy. There is certainly no indication that the shopping pattern presented is unusual or that it is the result of fraud or trafficking.
- With regard to the transactions documented in Attachment 2, the large transactions are not proof of fraud or trafficking.
- The regulations impose no limit on the size of transactions and the Appellant does not have the authority or ability to regulate the spending patterns of account holders.
- Moreover, the majority of transactions in Attachment 2 were below \$75.00. Given the price of groceries and that many customers shop for large families, these dollar amounts are not indicative of, and certainly do not prove, any improper use of SNAP benefits, or trafficking in same.

- The Appellant does not ask and cannot know what SNAP account holders plan to do with food purchased from the store. The Appellant believes that customers buy food for their personal consumption and that of their families.
- If some SNAP users give or trade the food products away, this is without the knowledge of the seller and cannot be deemed the fault of the seller.
- The Appellant has a meritorious defense to the charges. The Appellant is aware of the SNAP regulations regarding the use of and acceptance of SNAP benefits and complies with such rules and instructs and orders employees to do the same.
- Employees are periodically given written and oral instructions regarding compliance with the SNAP regulations.
- In the event that liability is found, the Appellant requests consideration for the imposition of a civil money penalty in lieu of a permanent SNAP disqualification pursuant to 7 CFR § 278.6.
- The Appellant is eligible for a hardship civil money penalty pursuant to 7 CFR § 278.6(f)(1) as the store is selling a substantial variety of staple food items and the firm's disqualification would cause hardship to SNAP households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.
- The Appellant trains its employees on the SNAP rules compliance and has not been previously cited for any SNAP violations.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of March 2022 through August 2022, Jandinga Deli Grocery Store Corp was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on September 24, 2021, the owner signed a SNAP application for the store and acknowledged she 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 September 12, 2022 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 600 square feet in size with approximately 200 square feet of storage area outside of public view which stocked predominantly drinks and alcohol;
- Had two storage coolers, one of which was located on the sales floor which stocked alcohol and the second was a walk-in cooler which stocked predominantly drinks and alcohol;
- Had one storage freezer located in the kitchen which was used to store foods for use in the preparation of hot and/or cold prepared foods;
- 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 partially obstructed by an ice cream freezer;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Did not have optical scanners;
- Did not have a special pricing structure, such as prices ending in \$.x9 or \$.00;
- Did not round transactions up or down at the checkout counter;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No orders (telephone or on-line) were taken;
- Delivery was not offered to customers;
- Did not stock a profusion of specialty or ethnic food items;
- Did not stock infant formula;
- The six most expensive (costing \$5.00 and above) SNAP-eligible food items in stock were Mazola oil at \$13.99 per 96 fluid ounces (6 units in stock); Canilla rice at \$12.99 per 10 pounds (3 units in stock); various deli meats at \$9.99 per 1 pound; various deli cheeses at \$7.99 per 1 pound; Canilla rice at \$6.99 per 5 pounds (6 units in stock); and Mazola oil at \$6.89 per 32 fluid ounces (1 unit in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock consisted of ice cream only;
- Had a kitchen and hot foods were sold;
- Had a deli or prepared food section in which prepared, made-to-order sandwiches were sold;
- Deli meats and cheeses by the pound were sold and prices were posted;
- Store stock was used in the deli/prepared food section;
- Meat items included units of eggs, hot dogs, bacon, packaged pollock, and meat jerky;
- Dairy products included milk (dairy and coconut varieties), margarine, butter, and cheese;
- Had a limited variety and amount of fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta/ramen, cereal, flour, oatmeal, loaf bread, nuts, bagels, baking mix, rice, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, sugar, condiments, and cakes/pastries; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, household items, clothing, pet food, charcoal, automotive supplies, 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 71 sets of transactions (194 total transactions) that total \$9,952.34 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 27 different households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

#### **5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that a close look at the transactions log shows that the majority of these “grouped” transactions took place over several hours or over two separate days. There is no restriction on how frequently account holders may shop and there is no requirement on the business to attempt to “police” account holders shopping habits pursuant to any unstated policy. There is certainly no indication that the shopping pattern presented is unusual or that it is the result of fraud or trafficking.

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

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a limited food stock, a limited variety and amount of fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream. The 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 \$99.89 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) County. 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 a store employee, and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at the Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The majority of the 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.

In addition, the store visit report and photos indicate that there was only one checkout counter with limited check-out counter space which was partially obstructed by an ice cream freezer, one cash register and one EBT POS device for use in ringing-up SNAP purchases, no shopping carts or hand-held baskets available to customers for transporting food within the store, and no optical scanners or 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.

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 83 SNAP authorized retailers located within a 0.5 mile radius of Jandinga Deli Grocery Store Corp, including 2 super stores, 4 supermarkets, 2 large grocery stores, 7 medium grocery stores, 25 small grocery stores, 6 combination grocery/other stores, and 37 other convenience stores, that could meet the nutritional needs of SNAP customers. Some of these area authorized stores offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store.

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

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



## **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This charge letter Attachment documents 351 SNAP transactions, as large as \$150.00, that total \$20,232.01. These transactions were conducted by 78 different households. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the regulations impose no limit on the size of transactions and the firm does not have the authority or ability to regulate the spending patterns of account holders. Moreover, the majority of transactions in Attachment 2 were below \$75.00. Given the price of groceries and that many customers shop for large families, these dollar amounts are not indicative of, and certainly do not prove, any improper use of SNAP benefits, or trafficking in same. The Appellant does not ask and cannot know what SNAP account holders plan to do with food purchased from the store. The Appellant believes that customers buy food for their personal consumption and that of their families.

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

The store visit observations indicate that that the Appellant is a convenience store which measures approximately 600 square feet in size with approximately 200 square feet of storage area outside of public view which stocks predominantly drinks and alcohol, has two storage coolers, one of which is located on the sales floor and stocks alcohol and the second is a walk-in cooler which stocks predominantly drinks and alcohol, and has one storage freezer located in the kitchen which is used to store foods for use in the preparation of hot and/or cold prepared foods. The stock of SNAP-eligible foods is limited with no fresh or frozen meats, poultry, or seafood, a limited variety and amount of fresh produce stock, no frozen food stock other than ice cream, and lacks an abundant depth and breadth of staple foods. 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.

The store visit observations also indicate that there were only a few expensive eligible foods in stock, some of which were in limited quantities, which would account for these large amounts. As noted previously, the firm had only one checkout counter with limited check-out counter space which was partially obstructed by an ice cream freezer, one cash register and one EBT POS device for use in ringing-up SNAP purchases, and no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. The customers would have no place to put large purchases. In addition, there were no shopping carts and no hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

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).

5 U.S.C. § 552 (b)(7)(E).

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 Jandinga Deli Grocery Store Corp 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. 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.

### **Evidence of Trafficking**

Regarding the Appellant's contentions with respect to the reliability of the ALERT system, 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.

### **Customer Hardship**

The Appellant requests consideration for a hardship civil money penalty in lieu of a permanent SNAP disqualification as a permanent SNAP disqualification would impose a significant hardship on area 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.

### **Compliance History**

The Appellant’s contention that the firm has not been cited for prior violations is incorrect. During an undercover compliance investigation that was conducted during the period April 29, 2021 through May 6, 2021, the Appellant accepted SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). As such, a six month SNAP disqualification was imposed against the Appellant via letter of August 30, 2021. A judicial review of the imposed sanction resulted in a hardship civil money penalty being imposed in lieu of the six month SNAP disqualification. However, even if this had been the first time that the Appellant had been cited for SNAP violations, 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.

### **Hearing Request**

With regard to the Appellant’s request for an immediate hearing, this disqualification is an administrative action and the SNAP regulations do not provide for a hearing, but rather for an administrative review of the action. As noted previously, the Act and regulations provide that any firm aggrieved by an administrative review determination may seek judicial review of the determination in Federal court or a State court of record having competent jurisdiction. In such event, trial de novo proceedings ensure the firm of a full evidentiary hearing on the agency action at issue.

With regard to the Appellant's contentions with regard to due process, prior to a disqualification determination, the firm was given ample opportunity to reply to the charge letter and provide any information to justify as legitimate the transaction patterns detailed in the charge letter Attachments. The Appellant, through counsel, submitted a response to the letter of charges and the Retailer Operations Division received and considered this information prior to making a determination.

The second level of due process involves an administrative review, of which the Appellant, through counsel, has likewise availed itself and in the process of which the Appellant was granted an additional three weeks within which additional information may be provided in support of the request for review. Therefore, any evidence and information that the Appellant presented to the Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to the Appellant's right to a fair and thorough review. The Appellant has exercised its opportunity to reply to the charge letter and its administrative review rights, and by doing so has availed itself of the full complement of the agency's statutory obligations with regard to due process. Per Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and Section 279.7 of the SNAP regulations (7 CFR § 279.7), the Appellant also has the right to a judicial review of this final agency determination.

### **CIVIL MONEY PENALTY**

In the December 14, 2022 charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their charge letter.

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 December 27, 2022 response to the letter of charges and in the February 9, 2023 request for administrative review, the Appellant, through counsel, requested consideration for the imposition of a civil money penalty in lieu of permanent disqualification. The Appellant contends that the firm is aware of the SNAP regulations regarding the use of and acceptance of SNAP benefits and complies with such rules and instructs and orders employees to do the same. Employees are periodically given written and oral instructions regarding compliance with the SNAP regulations.

However, the record supports that the Appellant did not submit 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 Jandinga Deli Grocery Store Corp 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 20, 2023