

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

Kvvik Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0250132

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 the permanent disqualification of Kvvik Stop (Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the 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 September 14, 2022, 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 during the months of February 2022 through June 2022. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

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Appellant, through its previous representative, replied to the charges on September 26, 2022. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. Specifically, Appellant explained that the transactions were the result of the store extending credit to some of its customers. On October 11, 2022, the Retailer Operations Division sent a letter to the firm's representative asking for documentation of the alleged credit accounts. Appellant submitted pages of a notebook that included first names, dates, and amounts.

After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated October 28, 2022. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to 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 a November 9, 2022, e-mail, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative action 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, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 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 defines trafficking, in part, as:

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(a) states:

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

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

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(e)(1) reads, in part:

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

7 CFR § 278.6(i) states, inter alia:

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 THE CHARGES

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

- Multiple transactions were made from the accounts of individual SNAP households within a set time period.
- The store conducted EBT transactions that were large based on the observed store characteristic 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 the questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

In its November 9, 2022, administrative review request, and subsequent correspondence submitted on December 16, 2022, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- Appellant denies trafficking and states that the transactions are evidence of trafficking.
- There is no direct evidence of trafficking, and the charges are based on FNS's Anti-Fraud Locator Transactions (ALERT) system.
- Appellant sells the following large dollar items by case: Red Bull - \$82.13, \$62.28, and \$52.10; Monster - \$71.76; Body Armor- \$34.80; Powerade - \$22.00; 12 pack of soda - \$8.99; Jack Links - \$8.99 and \$5.99; box of candy - \$7.00; and pints of ice cream - \$6.99.
- Approximately 6.2% of Appellant's gross receipts involve SNAP redemptions.
- SNAP redemption activity was not surprising because it carries cases of energy drinks and other beverages, and its location is in a food desert.
- There are only 15 other authorized stores located within one mile of Appellant and only one within a reasonable half-mile distance.
- Appellant's Income Statement demonstrates that Appellant spent approximately \$180,000 during the review period to purchase inventory.
- The closest store sells far fewer staple food items.
- No other SNAP-authorized store in the vicinity sold as many eligible food items at comparable prices as Appellant.
- The multiple transactions were based on legitimate purchases by SNAP beneficiaries that Appellant had no control over and which it could not refuse to process.
- The Retailer Operations Division's conclusion of trafficking is unsupportable because Appellant was a busier-than-average convenience store, and because it was likely based on data associated with stores that sold fewer staples and engaged in far fewer SNAP transactions.
- FNS's analysis was flawed because it ignored the items sold and the characteristics of the surrounding community, and its location in a food desert.
- It is not a violation for SNAP recipients to shop at a store multiple times daily or to redeem all their monthly benefits at one time.
- Between February and June 2022, Appellant sold thousands of dollars of eligible food items every month.
- The allegedly high-dollar-value transactions were routine and unexceptional given that the Appellant purchased and sold substantial amounts of eligible food items, including cases of energy drinks and other relatively high-dollar eligible food items.
- Appellant submits that its purchase invoices for eligible food items during the review period strongly support the dismissal of the trafficking charges.
- It is not unusual for households to shop at Appellant on two or more occasions on the same day more than an hour apart or subsequent days, especially when considering the wide

array of staples and other eligible food items carried, the lack of comparable retailers within walking distance, and its location in a food desert.

- The large dollar transactions were outliers, not a pattern of SNAP trafficking, and not something that Appellant could prevent.
- SNAP customers at Appellant often share their benefits with friends and family members who shopped at Appellant at the same time.
- Appellant had more than sufficient sales to support the volume of SNAP redemptions during the Review Period.
- The transactions referenced in the Charge Letter reflect legitimate purchases of SNAP-eligible food items.
- Appellant engaged in a relatively small number of instances in which it extended credit to SNAP beneficiaries.
- Appellant was unaware that allowing repayment on credit accounts with SNAP benefits was prohibited by FNS's SNAP regulations and was conducted solely to aid customers who needed eligible food items after their monthly SNAP benefits had run out.

In support of its contentions, Appellant provided the following documents:

- October 28, 2022, determination letter.
- September 14, 2022, charge letter.
- September 26, 2022, reply to the charge letter.
- Declaration of store manager dated December 16, 2022.
- Eleven pages of credit logs.
- Merchant Statements for each month of the review period.
- State of Florida Department of Revenue filings for each month of the review period.
- SNAP Retailer Locator Map.
- Information related to scans from another store's judicial review.
- 198 invoices and receipts of purchased inventory.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Kvvik Stop as a convenience store on June 2, 2020. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 31, 2022, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions.

The store visit report and photographs documented the following store size, description, and characteristics:

- Appellant is approximately 3200 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was one cash register and two point of sale (POS) devices.
- There was no optical scanner.
- The checkout area had limited space to place items.
- Dairy included milk and coconut milk.
- There was no fresh produce.
- There was no fresh unprocessed meat.
- There was one package of sausage.
- Other staple foods available for purchase were juice, cereal, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy and carbonated and uncarbonated drinks.
- Ineligible items included gas, lottery, tobacco, alcohol, paper goods, cleaning products, paper goods, and health and beauty aids.
- There is interior space rented for hot food.

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. The highest priced items noted included six pack of Red Bull - \$11.99; four-pack of Red Bull - \$7.99; Peanuts- \$9.99; 12 pack of water - \$5.99; 12 pack of soda - \$6.99; and a gallon of milk - \$5.29. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors, especially competitors that sell similar or identical food items.

Charge Letter Attachment

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. Multiple transactions were made from individual benefit accounts in a set timeframe. This attachment documents 23 sets of transactions conducted by nine households that total \$4,568.69 in SNAP benefits that meet the parameters of this scan. One household conducted two larger than average SNAP transactions within a five-hour period in the even cent amounts of \$70.00 and \$30.00 (transactions #11 and #12). On March 7 and March 8, 2022, another household conducted three SNAP transactions at this gas station/convenience store that total \$378.08 (transactions #44-#46). Another household transacted \$459.00 in SNAP benefits at Appellant between May 11 and May 12, 2022 (transactions #35-#36). 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.

Counsel contends that it is not a violation of SNAP law or regulations for SNAP recipients to shop at a store multiple times daily or to redeem all their monthly benefits at one time. This is true. However, 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 Appellant's stock and facilities and are therefore indicative of trafficking. 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 or purchase such a large volume of items, there being no great variety of products, or price advantage. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The second and third transactions in each set are too large to consist of forgotten items.

Counsel explains that SNAP customers at Appellant often share their benefits with friends and family members who shopped at Appellant at the same time. Yet, none of the nine households conducted similar transaction sets at any of the other stores that they shopped. Furthermore, the Retailer Operations Division compared Appellant to two other convenience stores. Like Appellant, these comparison stores sell gas, sit on the same main road, and have an equal or greater variety of food items. The other two stores conducted two and one similar transactions set compared to Appellant's 23 transaction sets. This begs the question why households would be more likely to conduct multiple transactions within a set time at Appellant than at other similar nearby stores that they frequent.

The Retailer Operations Division also found that eight of the nine of the households who conducted the transactions in Attachment 1 had access to and shopped at large supermarkets and super stores. It is likely that households would shop at a gas stations convenience store for food items to supplement their overall grocery needs or to pick up snacks or drinks for immediate consumption, even on a repetitive basis. However, there does not appear to be an explanation for SNAP households would spend large portions of their monthly allotments at Appellant, particularly when they have access to larger, better stocked stores.

Appellant has not offered sufficient evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 125 transactions as large as \$259.22, and that total \$10,266.99. Appellant's average SNAP transaction amount was 178% greater than the average SNAP transaction for convenience stores in Seminole County during the review period. Appellant conducted 58% less SNAP transactions than the average for convenience stores and yet its total SNAP redemption dollar value was 17% greater than the average for convenience stores in Seminole County during the view period. The substantial number of high-dollar transactions in a five-month period call into question the legitimacy of these transactions.

Counsel explains that SNAP redemption activity was hardly surprising because it carries cases of energy drinks and other beverages ranging from \$22.00 to \$82.13 including Red Bull - \$82.13, \$62.28, and \$52.10; \ Monster - \$71.76; \ Body Armor- \$34.80; \ Powerade - \$22.00; and soda - \$8.99. On the day of the store visit, the highest priced items noted included much smaller packs of

Red Bull than what counsel references including a six pack of Red Bull for \$11.99 and four-pack of Red Bull for \$7.99 found in limited quantities (one four pack and three six packs). The other highest priced items include boiled peanuts - \$9.99; 12 pack of water - \$5.99; 12 pack of soda - \$6.99; and a gallon of milk - \$5.29. The store visit contractor indicated that the highest priced items were confirmed with the store employee on the day of the store visit. There were no signs or advertisements indicating that these other larger priced items were available for purchase. It is possible that on occasion Appellant sold larger case of energy drinks, but the evidence does not support that many of these flagged transactions can be explained by these alleged larger dollar items. The store visit report and photos from Appellant's previous store visit conducted on June 3, 2021, were also reviewed as part of the administrative review. Again, there were no large cases of the beverages that counsel listed available on the store floor for purchasing or any signs advertising the sale of these items. During this store visit the highest priced item was a four-pack of Red Bull for \$7.99 and beef jerky priced at \$7.49.

Appellant did not sell any fresh unprocessed meat and had no fresh produce on the day of the store visit. Appellant did not have any shopping baskets or shopping carts. The invoices submitted supported Appellant stock of snack food and beverages. Appellant is a gas station convenience store and there was no evidence to support that it had a greater inventory of food items than the nearby stores. Moreover, Appellant did not meet SNAP authorization criteria on either of the two previous store visits only having two varieties of dairy staple food items. Thus, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors.

Counsel contends that the large dollar transactions were outliers, not a pattern of SNAP trafficking. However, the evidence shows that these large dollar transactions actually comprise 19% of Appellant's total SNAP transactions for the review period.

Counsel states that Appellant was a busier-than-average convenience store and was likely compared to other stores that sold fewer staples and engaged in far fewer SNAP transactions. However, the evidence shows that Appellant conducted 58% less SNAP transactions than the average for the county. Thus, the evidence supports that Appellant was actually less busy in terms of SNAP transactions as compared to the average for convenience stores in Seminole County.

The Retailer Operations Division also compared Appellant to two nearby gas station convenience stores. Appellant's average SNAP transaction amount was between 136% and 170% greater than the other two stores. Curiously, Appellant also conducted between 45% and 88% less SNAP transactions than the other two stores. The Retailer Operations Division also determined that the transaction pattern of Appellant exceeded the other stores. Appellant's 125 flagged large dollar transactions comprised 19% of its total SNAP transactions during the review period whereas flagged large dollar transactions comprised 1% and 2% of the other stores total transactions. The data from these nearby stores show that the transaction pattern at the Appellant firm were unusual.

The affidavit submitted by the store manager indicates that he believes that Appellant's SNAP customers had limited or infrequent access to other SNAP retailers. It is true that sometimes a firm may have higher than average SNAP transaction amounts due to the lack of access to other SNAP authorized stores. The Retailer Operations Division determined that there were 13 other

authorized retailers within a one-mile radius of Appellant included two supermarkets and our super stores. Moreover, the evidence shows that the 32 households that conducted the flagged transactions collectively conducted 387 SNAP transactions at Appellant while conducting 960 SNAP transactions at other retailers. Thirty-nine percent of these household transactions were flagged as questionable at Appellant whereas three percent of all their other SNAP transactions were flagged at other retailers.

The Retailer Operations Division reviewed the transaction activity of seven households that conducted some of the flagged transactions. The evidence supports that these households had access to transportation within a short time frame of their unusual large transactions at Appellant. For example, on April 8, 2022, Household #1 transacted \$244.012 at Appellant while visiting two supermarkets and transacting \$65.57 and \$56.67. On February 4, 2022, Household #2 transacted an even \$88.00 at Appellant and visited a supermarket the following day transacting \$74.14. Household # 6 transacted a total on \$222.43 via six SNAP transactions at Appellant between March 3 and March 4, 2022, while shopping at a supermarket and transacting \$190.69. Similarly, on April 4, 2022, Household #7 visited a supermarket and transacted \$18.71 and then within 8 minutes and 28 seconds transacted \$196.07 in SNAP at Appellant. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices.

Invoices

Counsel reports that Appellant's Income Statement demonstrates that Appellant spent approximately \$180,000 during the review period to purchase inventory and contends that Appellant purchased sufficient inventory to satisfy its SNAP redemptions. With its administrative review request, counsel submitted invoices from the retailer documenting the inventory of eligible food items it purchased during the review period. Many invoices were not legible and many were for ineligible items including cigarettes. The invoices as submitted are sufficient appear to cover Appellant's SNAP redemptions. However, it is unclear if the invoices are sufficient to cover its SNAP redemptions plus all its other credit, debit, and cash sales. Counsel states that only four percent of the firms' total gross sales is SNAP purchases, and the store manager states that 20% of its customers are SNAP, thus total inventory should easily satisfy SNAP redemptions. However, even with sufficient food stock purchased at Appellant to mathematically support high dollar transactions, the frequent repeated large dollar transactions and large dollar transactions conducted at a gas station convenience store while these households shopped at larger stores with greater inventory are still questionable.

Household Affidavits

With its initial reply to the charges, Appellant submitted 11 household affidavits explaining that the households find shopping at Appellant convenient. Two out of the 11 households did not conduct any SNAP transactions during the review period. Three out of the 11 shopped at Appellant during the review period but did not conduct any of the flagged SNAP transactions. The other six households conducted some of the flagged transactions at Appellant; however, their statements are not sufficient evidence that the transactions were for eligible food items only.

Credit Accounts

Appellant claims that irregular SNAP transaction patterns are due to the firm giving store credit to households needing assistance, and not due to trafficking. The practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a lesser one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit accounts to obtain a lesser one-year disqualification penalty instead of permanent disqualification for trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the charge letter. The explanation provided by the Appellant, and the submitted notebook pages, fall far short of these expectations and is insufficient for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

Evidence

Counsel contends that there is no direct evidence of trafficking, and the charges are based on the ALERT system. The ALERT system is a computerized fraud detection tool to identify SNAP 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 conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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 based on 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.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring. Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and 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. Appellant offered insufficient evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations

Division, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter, and that no extension of time could be granted for making the request or for providing the required evidence. The criteria for a trafficking civil money penalty in lieu of disqualification is established under 7 CFR § 278.6(i) which reads, *inter alia*:

“In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §2 78.6(i)(1); and

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 violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of 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 ...”

With its reply to the charges, Appellant requested a CMP. In support of Appellant's contention that it is eligible for a CMP, previous counsel reported that Appellant had developed an effective compliance policy; the compliance policy was in place at the time of the alleged violations; Appellant trained its employees; and the owner did not benefit from any alleged trafficking. Appellant did not submit any documentation in support of its request.

The Retailer Operations Division determine that these statements from Appellant is not “substantial evidence” that fulfills each of the four criteria of 7 CFR § 278.6(i), demonstrating “that the firm had established and implemented an effective compliance policy and program to prevent violations.” The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. The determination by the Retailer Operations Division to deny Appellant a CMP is sustained.

CONCLUSION

The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained. The Retailer Operations Division's determination that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations is also sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is 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, 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.

MARY KATE KARAGIORGOS
Administrative Review Officer

April 5, 2023