

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

**Lancaster Deli & Liquor,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0256380**

**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 Lancaster Deli & Liquor (hereinafter “Lancaster Deli & Liquor” 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 Lancaster Deli & Liquor.

**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 October 17, 2022, the Retailer Operations Division informed the Appellant that Lancaster Deli & Liquor 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 October 26, 2022.

In a telephone response to the Retailer Operations Division of October 28, 2022, the Appellant replied to the letter of charges. In an additional telephone response of November 7, 2022, the Appellant cited credit extension to SNAP customers as the explanation for the SNAP transactions documented in the charge letter. The Appellant also requested an extension in time for providing an additional response to the letter of charges and to provide proof of credit accounts. On November 8, 2022, the Retailer Operations Division requested the submission of documentation to support the Appellant's credit extension contention and granted the Appellant's time extension request to November 17, 2022. The Appellant was informed that it must submit the credit extension documentation within 10 calendar days of receipt of the November 8, 2022 letter. The Appellant was also informed that the time to request a civil money penalty in lieu of permanent disqualification and to provide documentation to support such a request could not be extended. The record reflects that the Appellant, through counsel, submitted an additional response to the letter of charges on November 11, 2022. The record reflects that the Retailer Operations Division received and considered each of the Appellant's responses prior to making a determination.

After considering the Appellant's responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated December 2, 2022, informing the Appellant that Lancaster Deli & Liquor 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 December 15, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated December 21, 2022. In an email correspondence of December 27, 2022, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

### **SUMMARY OF CHARGES**

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

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

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

### **APPELLANT'S CONTENTIONS**

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

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

- The Appellant has been in business and an authorized SNAP retailer since 2016.
- The owner rarely visits the store and has a store manager that runs the day-to-day operations.
- The Appellant and/or its employees have never violated any laws related to Section 271.2 and 278.6(e)(1).
- The Appellant's transactions are based on the sale of qualified merchandise.

- The Appellant holds itself as a fully functioning grocery store.
- Most of the Appellant's customers buy groceries for their entire household as would a customer at a grocery store.
- For 80 percent of the large transactions, the Appellant extended store credit to SNAP customers who have been struggling to accommodate their needs even on government assistance. The Appellant refuses to allow struggling families to walk out of the store empty handed. While the transactions may appear large, they resulted from customers paying off credit accounts accumulated over time. The Appellant has always kept records of the credit log in order to guarantee that no illegal activities have taken place. A small list of store credits and EBT receipts are submitted in support thereof. The reason why there is only a partial record of receipts and credit logs provided is because the Appellant often throws away the credit records when customers have paid the amount owed.
- The Appellant was unaware that extending credit to SNAP customers is a violation of the SNAP rules.
- The Appellant shows no intention of allowing credit violations to happen again.
- With regard to the transactions documented in Attachment 1, the Appellant has never restricted customers' purchases since USDA policy has specifically stated that retailers are not allowed to limit or interfere with purchases of customers.
- Customers come to the Appellant for their daily groceries, snacks, and drinks.
- Customers come to the Appellant for needed multiple items to get them through a couple of days, weeks, or even sometimes an entire month.
- The Appellant is located close to a school which has more than 700 children, and children come to the subject store frequently to make repetitive purchases.
- SNAP customers of the Appellant take measured approaches when they purchase items with their SNAP cards. These customers are often struggling individuals who do not have the intention to budget their purchases. In many instances customers will have no clue how much money they have on their SNAP cards. As a result, customers choose to make relatively small purchases initially. If the initial purchases go through, customers will know how much money is left on their card from the receipts and make second purchases consequently.
- The Appellant provides sales incentives so local families may provide for their large families.
- The Appellant is located in populated area containing multiple neighborhoods for low-income families as well as homeless individuals. Additionally, the Appellant is located minutes away from the Social Security Administration and Division of Motor Vehicles (DMV). Both government institutions drive a massive crowd into this area every day. Coming to this area is like killing two birds with one stone. Individuals not only get the necessary services but also get to shop for their families at the Appellant.
- Many local families depend on public transportation to travel or often walk to the store.
- With regard to the transactions documented in Attachment 2, the Appellant does not have as much inventory as big grocery stores such as Walmart or Kroger.
- However, the store sells expensive items such as whole cuts of meat and expensive dairy products. Ten percent of the large purchases noted in the charge letter were due to the selling of expensive products.

- The COVID-19 pandemic has contributed to the large and multiple transactions in several ways.
- First, more individuals were qualified for SNAP benefits during the pandemic.
- Many of the store's customers' EBT amounts were also increased during the pandemic through P-EBT to cover the cost of breakfasts and lunches for their children who would have been eligible to receive a free or reduced price meal through the National School Lunch Program. The more children in a family, the more P-EBT benefits were provided to the households.
- In addition, towards the end of the pandemic, customers came into the store much more frequently to purchase food and drinks for social gatherings.
- The Appellant is especially known for selling items in bundles and cases. Thus, the frequent bulk and large transactions are adequate with the current circumstance of the community being more active than before.
- The Appellant has not been cited for prior SNAP violations.
- 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. The Appellant is located in an area with a much higher poverty rate than the national average. In addition, the Appellant helps the elderly shop for their grocery items when needed.
- The Appellant has implemented an effective compliance program to prevent violations of the SNAP regulations Section 271.2 and meets the eligibility requirements for a CMP under Section 268.6(f)(1).
- The Appellant implemented a legitimate training program for its employees.
- The Appellant has taken the time and effort to ensure all employees have been properly trained for their position. Every potential new employee needs to watch the SNAP videos and work side-by-side with the manager before he/she is allowed to work at the cashier machine.
- With regard to Criterion 1, since being authorized as a SNAP retailer, the owner has been active in ensuring full compliance with his employees and their obligations to FNS. A photocopied booklet is provided to each employee and issues and concerns regarding EBT processing are addressed as questions and issues arise. The Appellant's compliance policy states the following: (1) There is no exchange for cash for EBT card swipes; and (2) and only sell qualified EBT grocery items to your customers.
- The Appellant has a training policy in place for its employees. Using the url: [http://www.fns.usda.gov/sites/default/files/Retailer Training Guide.pdf](http://www.fns.usda.gov/sites/default/files/Retailer%20Training%20Guide.pdf), the Appellant has provided one-on-one instore training and a copy of the manual to all employees and store operators. The contents of the manual are discussed and reviewed with employees and partners of the business on a semi-annual basis. Each employee is reminded by the Appellant to never engage in the following: (a) Giving back cash in return for EBT purchases; (b) Disallowing sales to known friends of the card user if it appears as though the card user is outright paying for the groceries of a person that is not part of their household; and (c) Disallow sales on unqualified EBT items.
- With regard to Criterion 2, the firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter.

- With regard to Criterion 3, the firm developed and instituted an effective training program as specified in Section 271.2. The training program implemented by the Appellant includes: A review of the FNS handbook with each new employee and instructions to call USDA or the store owner if employees have any questions.
- With regard to Criterion 4, firm ownership was not aware of, did not approve of, did not benefit from or was not in any way involved in the conduct or approval of the trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm.

In support of these contentions, the Appellant, through counsel, submitted the following information for review:

- Customer affidavits (5 total);
- Credit ledgers/slips (20 pages total);
- Affidavit of store manager and employee; and
- Affidavit of store owner.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of January 2022 through June 2022, Lancaster Deli & Liquor was classified as a convenience store. When the Appellant was authorized by FNS for participation in the SNAP on December 4, 2018, the owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 13, 2022 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. The available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 2,288 square feet in size with approximately 100 square feet of storage area outside of public view which stocked predominantly alcohol and nonfood items;
- Had one walk-in storage cooler which stocked predominantly drinks and alcohol;
- Did not have storage freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Had an optical scanner;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$x.x9 or \$x.00;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- Did not stock any specialty items;
- Firm was not a WIC Program vendor and did not sell infant formula;
- The six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Jack Links bacon jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links beef teriyaki jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links original jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links peppered jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links sweet and hot jerky at \$7.99 per 3.5 ounces (1 unit in stock); and Jack Links jalapeno jerky at \$7.99 per 2.85 ounces (1 unit in stock);
- No fresh or frozen meats, poultry, or seafood;
- No frozen food stock;
- Had a kitchen; however, hot foods were not sold as the kitchen has not been operational since COVID-19;
- Did not have a deli or prepared food section and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, meat jerky, and canned fish;
- Firm did not meet the requirements for participation in the SNAP under Criterion A at the time of the store visit as dairy stock included only 1 unit of cheese and 12 units of milk;
- No fresh produce stock;
- Other staple foods available for purchase included such items as juice, nuts, pasta/ramen, rice, cereal, flour, baking mix, oatmeal, oats-other, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, and snack foods; and
- Ineligible nonfood items included health and beauty aids, household cleaning supplies, tobacco products, automotive supplies, lottery tickets, clothing, household items, 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.

## **Credit Extension**

The Appellant contends that for 80 percent of the large transactions, the store extended store credit to SNAP customers who have been struggling to accommodate their needs even on government assistance. While the transactions may appear large, they resulted from customers paying off credit accounts accumulated over time. The Appellant has always kept records of the credit log in order to guarantee that no illegal activities have taken place. A small list of store credits and EBT receipts are submitted in support thereof (20 pages total). The reason why there is only a partial record of receipts and credit logs provided is because the Appellant often throws away the credit records when customers have paid the amount owed.

When a retailer claims it maintains credit accounts to explain 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 in an attempt to obtain a lesser penalty after committing more egregious violations such as 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.

The submitted credit ledgers/slips contained the last four digits of the SNAP household numbers for 19 SNAP households. FNS evaluated the credit extension documentation provided and properly determined that the information was likely fabricated and insufficient to support the Appellant’s credit extension contention for the following reasons:

**5 U.S.C. § 552 (b)(7)(E).**

Therefore, while the firm may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the charge letter are due to repayment on credit accounts.

While the Appellant contends that it did not know that the extension of credit to SNAP customers was a violation of the SNAP regulations, the firm, upon being authorized by FNS to participate in the SNAP, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

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

This charge letter Attachment documents 64 sets of transactions (158 total transactions) that total \$9,004.51 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 46 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

#### **5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that the store's transactions are based on the sale of qualified merchandise. The Appellant has never restricted customers' purchases since USDA policy has specifically stated that retailers are not allowed to limit or interfere with purchases of customers. Customers come to the Appellant for their daily groceries, snacks, and drinks.

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

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a limited food stock, no fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no frozen food stock. The store visit observations indicate that the subject firm is a convenience store without unique food stock, floor plan, or other characteristics. The Appellant's transaction activity is unusual as every transaction in each set of transactions range from \$20.00 to \$130.00 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 store visit photos offer no explanation as to why SNAP customers would routinely shop at Lancaster Deli & Liquor multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items.

In addition, the store visit report and photos indicate that there was only one cash register and one EBT POS device for use in ringing-up SNAP transactions, one checkout counter with limited check-out counter space, no shopping baskets or carts available to customers for transporting food within the store, and no conveyor belts to expedite high dollar or rapid consecutive purchases. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, or a profusion of specialty or ethnic goods which would entice SNAP customers to utilize the subject store over other area authorized retail stores. No evidence was advanced supporting the Appellant's claim that it offers sales incentives so local families may provide for their large families.

While the Appellant firm may be located in an area with households that qualify for SNAP benefits, near schools, the Social Security Administration, and the DMV, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

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

The Appellant contends that many local families depend on public transportation to travel or often walk to the store. 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 3 SNAP authorized retailers located within a 1.0 mile radius of

Lancaster Deli & Liquor, including 1 super store and 2 other convenience stores, that could meet the nutritional needs of SNAP customers. In addition, there were 22 SNAP authorized stores located within a 2.0 mile radius of the subject firm, including 2 super stores, 2 supermarkets, 1 medium grocery store, 1 small grocery store, 1 combination grocery/other store, and 15 other convenience stores. Some of these authorized SNAP stores are larger than Lancaster Deli & Liquor and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

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

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

### **Bulk of SNAP Benefits Exhausted (Charge Letter Attachment 2)**

This charge letter Attachment documents 39 suspicious transaction sets (69 total transactions) which ranged from \$74.00 to \$181.21 and totaled \$4,150.33. These transactions were conducted by 25 different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households.

Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a convenience store with limited stock, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

### **5 U.S.C. § 552 (b)(7)(E).**

A review of the store visit report, which was signed by and completed in cooperation with a store employee, as well as the stock photos indicate that Lancaster Deli & Liquor offers a limited stock of SNAP-eligible foods with no fresh or frozen meats, poultry, or seafood, no frozen food stock, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. The store's inventory contained almost exclusively inexpensive single-serving prepared food items and accessory foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or

flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

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

### **Excessively Large Purchase Transactions (Charge Letter Attachment 3)**

This charge letter Attachment documents 308 SNAP transactions, as large as \$130.00, that total \$19,171.98. These transactions were conducted by 87 different SNAP 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 it holds itself as a fully functioning grocery store. Most of the Appellant's customers buy groceries for their entire household as would a customer at a grocery store. Customers come to the Appellant for needed multiple items to get them through a couple of days, weeks, or even sometimes an entire month. In addition, towards the end of the pandemic, customers came into the store much more frequently to purchase food and drinks for social gatherings. The Appellant is especially known for selling items in bundles and cases. Thus, the frequent bulk and large transactions are adequate with the current circumstance of the community being more active than before.

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

The store visit observations indicate that the Appellant is a convenience store which measures approximately 2,288 square feet in size with approximately 100 square feet of storage area outside of public view which stocked predominantly alcohol and nonfood items, has one walk-in storage cooler which stocked predominantly drinks and alcohol, and does not have storage freezers. The stock of SNAP-eligible foods is limited with no fresh or frozen meats, poultry, or seafood, no frozen food stock, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. In addition, the store did not meet the requirements for participation in the SNAP under Criterion A at the time of the store visit as dairy stock included only 1 unit of

cheese and 12 units of milk. The Appellant's meat stock was also limited including units of canned/potted meat, meat jerky, and canned fish only.

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

The Appellant contends that the store the sells expensive items such as whole cuts of meat and expensive dairy products. Ten percent of the large purchases noted in the charge letter were due to the selling of expensive products. However, the store visit observations indicate that there were only a few expensive eligible foods in stock, all of which were in limited quantities, that would account for these large amounts. Specifically, the six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Jack Links bacon jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links beef teriyaki jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links original jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links peppered jerky at \$7.99 per 3.5 ounces (1 unit in stock); Jack Links sweet and hot jerky at \$7.99 per 3.5 ounces (1 unit in stock); and Jack Links jalapeno jerky at \$7.99 per 2.85 ounces (1 unit in stock). If there were additional SNAP-eligible food items in stock costing more than \$5.00, it would be likely that the store employee would have told the store visit reviewer. In addition, the Appellant does not have sufficient storage coolers or freezers to stock whole cuts of meat prior to being sold to customers.

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).

With regard to the five customer affidavits/statements provided by the Appellant that purport to establish that the transactions in the charge letter were legitimate purchases of eligible food, the truth of such statements cannot be verified. Written affidavits or declarations, by themselves and without supporting documentation relative to the specific transactions in question, offer little to no insight into the actions that occurred between the customer and the store clerk at the point of sale. Unsubstantiated statements are insufficient to rebut the trafficking determination. Even if it is assumed that the five customer statements provided were 100% accurate and accepted as evidence of legitimate transactions, they could account for just a small percentage of the SNAP households who conducted flagged transactions noted in the charge letter as there were 46 different households that conducted Scan B2 (Attachment 1) flagged transactions, 25



different SNAP households that conducted Scan C (Attachment 2) flagged transactions, and 87 different households that conducted Scan F (Attachment 3) flagged transactions listed in the charge letter Attachments. As such, the submitted customer statements are not found to be more persuasive of legitimate SNAP transactions for eligible foods.

While the Appellant's sales may have increased as the result of the COVID-19 pandemic and increased SNAP benefits to recipients, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

#### 5 U.S.C. § 552 (b)(7)(E).

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

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

### **Corrective Action**

With regard to the Appellant's contentions with respect to the implementation of corrective actions to ensure that future SNAP violations do not occur, it is important to clarify for the

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

### **Compliance History**

The Appellant is correct that the firm has no previous history of SNAP program violations or warnings. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

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

### **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.



## CIVIL MONEY PENALTY

In the October 17, 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 November 11, 2022 response to the letter of charges and in the December 15, 2022 request for administrative review (i.e., past the 10 day required timeframe of receipt of the October 17, 2022 charge letter), the Appellant, through counsel, requested consideration for the imposition of a trafficking civil money penalty in lieu of permanent disqualification. The Appellant contends that the firm implemented a legitimate training program for its employees and an effective compliance program to prevent violations of the SNAP prior to the occurrence of the SNAP violations.

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

## CONCLUSION

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

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case,

it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Lancaster Deli & Liquor 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

March 17, 2023