

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

Stanley Deli & Grocery Inc,

Appellant,

v.

**Office of Retailer Operations and
Compliance,**

Respondent.

Case Number: C0205908

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Stanley Deli & Grocery Inc (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Office of Retailer Operations and Compliance took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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

By letter dated March 15, 2018, the Office of Retailer Operations and Compliance charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in July 2017 through December 2017. 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 the 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).

Appellant, through counsel, submitted a Freedom of Information Act (FOIA) request on March 22, 2018, via email. The agency responded to the FOIA request in an email dated May 1, 2018. Counsel subsequently requested an appeal of the content of the FOIA response on July 23, 2018. The final FOIA appeal reply was issued on November 18, 2020. A reminder of the opportunity to submit any new information following receipt of the FOIA appeal was also sent to counsel on November 18, 2020.

Appellant requested and was approved for an extension of time to respond in an email dated November 23, 2020, that established December 10, 2020, as the deadline to respond to the charges.

Appellant responded to the charges in a letter sent via email on December 10, 2020, that did request a CMP, did not provide any supporting documentation as required. The Office of Retailer Operations and Compliance notified Appellant by letter dated April 8, 2022, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter sent via email on April 12, 2022, Appellant, through counsel, appealed the Office of Retailer Operations and Compliance's assessment and requested administrative review. The appeal was granted. Subsequent correspondence consisting of a brief and exhibits dated May 16, 2022, was submitted by counsel via email.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) 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 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."

7 CFR § 278.6(e)(1)(i) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined in part as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. Trafficking includes “Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food”.

7 CFR §278.6(i) states: “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.”

7 CFR §278.6(b)(2)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

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. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of July 2017 through December 2017. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
3. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

Appellant, through counsel, submitted a voluminous 48 page brief in support of its request for administrative review which included a considerable number of contentions targeted to broadly question the validity of trafficking cases based on SNAP benefit redemption data, as well as the processes used to develop and decide these cases. Appellant also argued, in part, that normal SNAP household shopping behaviors, local business conditions, and other factors can explain the transactions identified in the charge letter. Appellant challenged the ALERT system and the data analyses by Retailer Operations staff. Appellant cited case law from a variety of court cases as well as Final Agency Decisions (FAD) and referenced both Departmental and non-Departmental studies. For purposes of brevity, these broader arguments will not be specifically listed here.

Contentions specific to Appellant's case are summarized below:

- The owner has crafted the store's offerings to cover a material portion of the grocery purchases of local SNAP participants.
- The store occupies approximately 3,000 square feet and sells a variety and quantity of staple food items to the surrounding community such as: fruits, vegetables, bread, milk, butter, cheese, bacon, beef, pork, fish, lunch meat, eggs, canned meats, pasta, rice, chips, muffins, cookies, and additional food items. Inventory at this store is replenished on a rolling basis and depending upon demand.
- The store offers its clientele a considerable inventory in breads, cereals, and meats with such a variety of stock that a household could satisfy all of their needs on a single shopping trip with enough food to make meals for their families.
- With respect to inventory quantity, it is not the Appellants' position that customers are stacking \$196.43 worth of canned foods on the counter and buying them. Instead, these purchases involve high priced items (which include Enfamil, Rice, and Boar's Head Lunch Meat/Cheese).
- Many of the local SNAP household members are unemployed, either by virtue of their disabled designation or as a matter of happenstance. To satiate their boredom, these participants will regularly shop at stores to find something to do. In some instances, the act of purchasing an item is pleasing, as much of the month they lack the financial ability to do so. So they will either shop regularly on the same day, or they will binge shop and make large purchases because they have the benefits to do so.

Appellant submitted invoices for inventory purchases, store photos, customer affidavits, the 2018 FNS New York SNAP Profile for Congressional District 8; the FNS September 2020 Report on Benefit Redemption Patterns in SNAP in FY 2017; an excerpt from the April 2016 Convenience Store News for the Single Store Owner; a three-page excerpt from the Social Science Statist on using the Pearson Correlation Coefficient Calculator to produce an ALERT Correlation Coefficient Calculation; the FMI report on Grocery Shopping Trends 2016, the FNS November 2016 report of Foods Typically Purchased by SNAP Households; a 2017 Elsevier Preventive Medicine Report on Shopping pattern and food purchase differences among SNAP and non-SNAP households in the United States; and a 2014 Elsevier Social Science & Medicine Report on What does SNAP benefit usage tell us about food access in low-income neighborhoods? in support of these contentions.

The preceding represents a brief summary of Appellant's contentions 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 herein.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded

to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of evidence for the legitimacy of such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. 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 patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Characteristics

FNS authorized the firm on November 5, 2018, as a medium grocery store. In its application, Appellant stated that the firm opened on August 18, 2015, which is contrary to Appellant's claim that the firm has been in business for 29 years. In reaching a disqualification determination, the Office of Retailer Operations and Compliance considered information obtained during a December 31, 2017, store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The store visit report documented the store size, description, and characteristics. The report also described the checkout counter area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than one customer at a time. The store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns.

There was no indication that SNAP households were inclined to regularly shop at the store to purchase large quantities of grocery items. The available food was primarily inexpensive and there were no unique items that could not be found at competing or larger firms. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly sized competitors.

The FNS store visit report showed that the firm was a relatively small medium grocery store offering a moderate quantity and variety of staple foods consisting of traditional American and some Hispanic brands, primarily Goya products. During the store visit, the store's cashier stated that the store was approximately 1200 square feet in size. This is consistent with the previous FNS store visit on October 27, 2015, in which the contractor estimated store size as being 1,404 square feet and much smaller than Appellant's claim of the store being 3,000 square feet. A significant portion of store inventory was in accessory foods such as candy and snacks and a wide variety of ineligible items such as tobacco, alcohol, lottery, hot foods/drinks, health and beauty items, household items, paper items, clothing, diapers, and other ineligible items. There was one very small shopping cart and nine small hand baskets to carry purchases to the small checkout area. The checkout area was an opening set into a plastic storage wall that was approximately 1.5 feet deep by 4.0 feet wide with displays on both sides leaving a limited area for customers to place their purchases. There was also a chest ice cream freezer directly in front of the checkout. The small checkout area would make it problematic to process large orders. The checkout area had two cash registers, two POS devices, and no optical scanner as confirmed

by the store cashier. No food packages, bundles, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase. The only bulk items available were 20 pound bags of rice and gallon jugs of corn oil.

The store visit report was completed in conjunction with the store cashier. The report specifically stated that most food prices ended in .x9 cents and also contained a listing of the most expensive food items costing \$5.00 or more for sale in the store. This listing consisted of four items cited by the store cashier: 12.5 ounce cans of Enfamil priced at \$18.99, 20 pound bags of rice priced at \$15.99, gallon jugs of corn oil priced at \$14.99, and roast beef deli meat priced at \$11.99/pound.

The firm had a large commercial kitchen and food prep area containing a two upright reach-in freezers, a steam table, a heated hot foods display case, a stainless steel prep table with cooler under, other stainless steel prep tables, cooktop grill, commercial exhaust hood, deep fat fryer, microwave oven, triple sink, commercial scale, commercial slicer, etc. Large menu boards advertised an extensive variety of hot foods that included: breakfast platters, breakfast sandwiches, hot and cold sandwiches, lunch specials, hot soups, hot sides, etc. The store cashier stated that store food stock (breads, meats, deli meats/cheeses, and produce) was used in the preparation of the hot and cold prepared foods and that deli meats/cheeses were available for purchase by the pound. The firm also had a large deli display case and a large meat display case.

While the firm did stock a variety of baby foods and formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers, not SNAP EBT at the Appellant firm.

A previous FNS store visit was conducted on October 27, 2015, for the purposes of determining if the store had a sufficient quantity and variety of staple food stock to be authorized as a SNAP retailer. The store had a much greater quantity and variety of fresh meats, fresh produce, and breads during this visit. The store also had common items such as sour cream, powdered milk (Nido), and a variety of frozen dinners and entrees that were not evident during the December 31, 2017, store visit.

Multiple Transactions in Unusually Short Time Frames

This Attachment documents 72 individual transactions in 34 sets of two or more transactions conducted by 25 different households in a short period of time. Individual transaction amounts range from \$20.00 to \$264.99 with 46 transactions exceeding \$50.00 and 17 transactions for \$100.00 or more. There are transaction set totals as high as \$286.99, \$259.90, \$246.99, \$229.50, \$226.82, \$222.30, \$192.75, \$186.76, \$183.22, \$181.35, \$179.93, \$179.38, \$173.72, \$166.99, \$159.87, \$151.53, \$139.98, \$137.26, \$136.18, \$134.69, \$134.48, \$131.14, and \$129.37 to list the highest dollar value sets. The dollar amounts of subsequent transactions in each set are substantial and equal or exceed \$20.00 in each of the 34 sets with subsequent purchases exceeding \$35.00 in 27 sets and \$100.00 in eight sets. The span of time for transaction sets ranges from 41 seconds to more than 23 hours with 13 of the 34 sets occurring over multiple days. Only three of the 34 transaction sets occur in under three hours. One set is comprised of four individual transactions and two are comprised of three individual transactions while the

remaining 31 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

This Attachment includes an unusually high number of transactions ending in a same cents value such as 10 transactions ending in .99 cents, nine ending in .00 cents, and eight ending in .50 cents accounting for 37.5 percent or more than one out of every three transactions in this Attachment. When many transactions end in the same cents, it appears that the transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking. Per the store cashier during the FNS store visit, the firm did not offer a special pricing strategy or have expensive eligible food stock that would routinely result in these same repeating ending cents values and its four most expensive items, as confirmed by the store cashier, were jugs of corn oil, bags of rice, and deli meats priced from \$11.99 to \$15.99. Cans of Enfamil are not included as these would most likely be purchased using WIC vouchers, not SNAP benefits. It is unclear how so many transactions between \$20.00 and \$264.99 could routinely end in these same repeating ending cents values considering the .x9 pricing plan and available stock.

Appellant's contentions regarding this charge are addressed below.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible foods they may purchase. The SNAP transactions listed in this Attachment 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 store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item after checking out or of multiple members of the same household shopping together and making separate purchases using the same EBT card in quick succession as 31 of the 34 transaction sets occur in three hours or more time. Contrary to Appellant, it makes no sense that a household would conduct as many as four separate transactions over a short period of time that total to a substantial part of the household's monthly SNAP issuance when that household is also shopping at many larger stores. The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts equaling or exceeding \$20.00 with subsequent purchases exceeding \$35.00 in 27 sets and exceeding \$100.00 in eight sets, far more than the cost of a forgotten item or two. It is noted that the September 2020 FNS report on *Benefit Redemption Patterns in SNAP in FY 2017* states that while households on average did spend 77.6 percent of their benefits by mid-month with over half being expended in the first week after issuance, that 82.1 percent of all benefits were spent at a super store or supermarket. Only 0.7 percent of households shopped exclusively at grocery stores while only 4.6 percent did not shop at a super store or supermarket. On average, households conducted 9.4 transactions per month that averaged \$27.36. Accordingly, the transaction patterns contained in the charge letter Attachments are not typical, but are unusual and indicative of trafficking.

Appellant, through counsel, inaccurately cites *Onukwugha v. U.S.* claiming it says that “multiple transactions occurring over the span of hours” are not “inherently suspicious,” as it is not uncommon for a customer to make multiple trips to the same store on the same day. While court precedent is beyond the scope of this determination, FNS notes here that the Appellant is distorting the court’s findings. The court stated the following conclusion regarding the Scan B2 transactions:

“Transactions occurring in relatively quick succession, especially transactions that are large and for identical amounts, are extremely suspicious. Onukwugha has not offered any explanation for these transactions and neither have his customers who were involved in certain of these suspicious transactions, (see Ex. 101 at 42-43; Ex. 102 at 26-27; Ex. 102 at 15-16). In the absence of an innocent explanation, the court must conclude that Onukwugha has failed in his burden to prove that these transactions were not the result of trafficking.”

Appellant contends that many of the local SNAP household members are unemployed, either by virtue of their disabled designation or as a matter of happenstance. To satiate their boredom, these participants will regularly shop at stores to find something to do. In some instances, the act of purchasing an item is pleasing, as much of the month they lack the financial ability to do so. So, they will either shop regularly on the same day, or they will binge shop and make large purchases because they have the benefits to do so. Appellant offered no evidence to support these offensive claims and transaction evidence also does not support them.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total \$100.22 or more when the comparable average medium grocery store SNAP transaction amount in Kings County during the review period was \$15.49. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Office of Retailer Operations and Compliance’s analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant’s location, including a variety of super stores and supermarkets. Appellant’s contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a moderately stocked medium grocery store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at

and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

For example:

One of the households analyzed spent \$47.15 in two transactions at a supermarket located just around the corner and less than 15 minutes later spent \$22.68 at the Appellant firm. The very next day, this same household spent \$8.00 at the firm and 62 minutes later spent \$1.25 at the supermarket located just around the corner. This household then returned to the firm 82 minutes later spending \$106.69. In summary, this household spent \$137.37 in three transactions at the Appellant firm while spending \$48.40 in three transactions at a supermarket store and a small grocery store in approximately 18 hours. Similar transactions were conducted by this household throughout the review period. This household conducted a total of 21 transactions at the Appellant firm during the six month review period while conducting 23 transactions at six different super stores and supermarkets located from 0.05-1.1 miles from Appellant's location. This clearly shows that this household had ready access to transportation and did not consider the Appellant firm to be its primary grocer. It is inexplicable, based on the Appellant firm's moderate stock of staple foods and lack of any unique food items, that any SNAP household would spend in excess of \$100.00 in legitimate purchases of eligible food items on four different occasions when it was also shopping at a far better stocked super stores and supermarkets before and after the purchases at the Appellant firm. This unusual and erratic shopping pattern is indicative of trafficking. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

A different household shopped at the Appellant firm conducting three transactions (\$5.50, \$34.00, \$66.22) totaling \$105.72 in a span of eight minutes. Approximately three hours later, the same household shopped at a supermarket located just around the corner and a super store located 0.95 miles from Appellant's location spending \$6.18 and \$69.63, respectively. In summary, this household spent \$105.72 in three transactions at the Appellant firm while spending \$75.81 in two transactions at a supermarket store and a super store in less than eight hours. Similar transactions were conducted by this household throughout the review period. This household conducted a total of 15 transactions at the Appellant firm during the six month review period while conducting 17 transactions at four different super stores and supermarkets located from 0.05-1.22 miles from Appellant's location. This clearly shows that this household had ready access to transportation and did not consider the Appellant firm to be its primary grocer. It is inexplicable, based on the Appellant firm's moderate stock of staple foods and lack of any unique food items, that any SNAP household would spend in excess of \$100.00 in legitimate purchases of eligible food items on five different occasions when it was shopping at a far better stocked super stores and supermarkets before and after the purchases at the Appellant firm. This unusual and erratic shopping pattern is indicative of trafficking. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

Near Depletions of SNAP Benefit Accounts

This Attachment lists a total of 45 EBT transactions in 31 sets of one or more transactions involving 25 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. It is noted that 14 of the 45 transactions end in .00, .50, or .99 cents accounting for approximately one-third of the transactions in this Attachment, a fact that is irregular and suspicious. As previously noted, none of these ending cents amounts are supported by store inventory or pricing.

There are transaction set totals as high as \$196.43, \$194.00, \$192.13, \$189.95, \$189.80, \$186.99, \$186.56, \$184.78, \$183.99, and \$182.16 to cite the very largest transactions occurring from \$180.00-\$200.00. The large number of transaction set totals in this range that depleted all or the majority of a household's monthly SNAP allotment are unusual and suspicious given that the SNAP allowance for a single person household was \$194.00 during the review period. Depleting a household's SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP households.

SNAP benefits are intended to supplement the food budget for recipient households whose net income is at or below the Federal Poverty Level. A government report on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 79.1 percent of a household's allotment remains unspent. Even after seven days, 42 percent of benefits still remain unspent. It typically takes two weeks to deplete 78.1 percent of one's benefits. This report further revealed that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (\$30.00 on average) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits at all for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

The FNS store visit report shows this is a medium grocery store offering a moderate quantity and variety of staple foods as well as a variety of accessory foods and ineligible nonfood items. The report shows that the firm does not carry any unique items or offer any distinctive services that cannot be found at a large number of larger grocery stores located nearby and at a distance. The firm is also located in an urban area with scheduled fixed route bus service available nearby that would facilitate shopping at other stores. Additionally, there is a supermarket located just steps

around the corner from the Appellant firm. This store and the many other larger grocery stores located nearby would offer a much greater quantity and variety of eligible foods at lower prices than Appellant's moderately stocked store. The Office of Retailer Operations and Compliance analysis of shopping patterns for households in this Attachment shows that they are regularly shopping at a variety of larger stores located nearby as well as at a distance. Based on these options, it is unlikely that most SNAP households who are shopping at larger stores that would offer a much greater selection of food items at lower prices would choose this firm as a destination for making large household food purchases.

SNAP households have no limits on the number of times they may use their card or how much eligible food they may purchase. The transactions are questionable because they are inconsistent with normal spending habits attributable to a store with this level and type of eligible food stock, and facilities. Therefore, this atypical behavior is indicative of trafficking.

Appellant's contentions of co-shopping and convenience will be addressed later in this decision.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 25 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, during the course of some hours, all on the same day. As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

High Dollar Value Transactions

This Attachment lists 453 individual EBT transactions ranging from \$60.99 to \$319.90 with 268 transactions equaling or exceeding \$100.00 and 27 exceeding \$200.00. While these high dollar amounts may not be unusual for a big box super store, the substantial number of extremely high dollar transactions is uncharacteristic for a medium grocery store offering a moderate stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$15.49 for this store type in Kings County during the review period. This is unusual and indicative of trafficking.

This Attachment includes an unusually high number of transactions for the exact same dollar amount such as four transactions for \$65.99, five transactions for \$69.99, three transactions for \$70.50, six transactions for \$70.99, three transactions for \$72.50, three transactions for \$72.99, three transactions for \$74.50, three transactions for \$74.99, four transactions for \$80.99, three transactions for \$87.50, three transactions for \$99.95, three transactions for \$102.33, three transactions for \$102.99, and three transactions for \$142.99 that are not supported by store inventory or pricing structure. When many transactions are of the same amount, it appears that the transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking. Per the store cashier during the FNS store visit, the firm did not offer a special pricing strategy or have expensive eligible food stock that would routinely result in these same dollar amounts. It is noteworthy and suspicious that almost all of these same dollar transactions end in the same cents amounts of .00, .50, and .99 cents as previously discussed. The charge of trafficking is further supported by the Appellant firm's pricing plan that has most items individually priced with prices ending in .x9 cents. Due to the lack of expensive food

items and the pricing plan, it would be nearly impossible for multiple households to randomly select eligible food items equaling these exact same dollar amounts let alone ending in the same cents amounts as noted in both of the prior Attachments.

The evidence under review shows that many SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the firm. These high dollar value transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is very limited, often on the same day, or within 24-72 hours of purchases at larger food stores.

For example:

A single person household, based on its SNAP allotment, conducted seven transactions at the Appellant firm while conducting 20 transactions at super stores, supermarkets, and a large grocery store during the review period. This household spent \$9.89 at a supermarket located 0.59 miles from Appellant's location and the very next day spent \$80.95 at the Appellant firm. One hour later, this same household shopped at a super store located 0.78 miles away spending \$20.27. In summary, this household spent \$80.95 in a transaction at the Appellant firm while spending \$30.16 in two transactions at a supermarket store and a super store in less than 24 hours. The next month the household spent \$31.86 at the supermarket located just around the corner from the Appellant firm and three minutes and 27 seconds later completed a transaction for \$81.25 at the firm. It is implausible that this household could gather their purchases from the nearby supermarket, walk or drive around the corner to the Appellant firm, select \$81.25 worth of eligible food items using the very small shopping cart or even smaller handheld baskets and then complete the multi-step process needed to complete a SNAP transaction at the firm which does not have a large checkout area, a conveyer belt, or a scanner to facilitate purchases in under three minutes. Based on these facts, it is doubtful that this household was conducting a legitimate purchase of eligible foods at the Appellant firm and more likely that it was trafficking SNAP benefits for cash. This same household had high dollar value transactions at the Appellant firm in each month of the review period that were preceded or followed by transactions at much larger stores of comparable or, in the majority of cases, much smaller dollar values. This makes no sense since the Appellant firm carries no unique food items and has the same eligible food stock that could be found at any of the larger stores the household regularly shopped at. It is further noted that five of the seven transactions at the Appellant firm were in nearly identical dollar amounts of \$80.95, \$81.25, \$80.99, \$80.99, and \$81.50. The remaining two transactions were \$40.99 and \$70.99. As previously discussed, the prevalence of transactions ending in specific cents amounts, such as 0.99 cents, is unbelievable based on the firm's inventory and pricing structure making it more likely than not that these were instances of trafficking at the Appellant firm.

Appellant offered no justification as to why households would spend significant amounts of their limited SNAP benefits at Appellant's moderately stocked medium grocery store within minutes or hours of shopping at larger and better stocked stores that would have offered a greater selection of staple foods at lower prices. These suspicious transactions are indicative of trafficking at the Appellant firm. The Food and Nutrition Act of 2008, as amended, requires only one occurrence of trafficking to permanently disqualify a SNAP retailer.

Both the FNS 2011 and the 2020 reports titled "*Benefit Redemptions in the Supplemental Nutrition Assistance Program*" for fiscal years 2007 and 2017, respectively, show that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a super store or a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (\$27.36 on average for 2017) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in a period of hours, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

No explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater quantity and variety of SNAP eligible foods at lower prices and who apparently have no transportation limitations would be conducting high dollar transactions at a much smaller and moderately stocked grocery store. It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the super stores, supermarkets, and other larger grocery stores the households in this Attachment were regularly shopping at and these stores would also likely have significantly lower food prices yet these households continued to spend large dollar amounts at a grocery store with a moderate stock of staple foods and only one very small shopping cart that would be needed for the high dollar value transactions in this Attachment. There is no legitimate reason why these households would spend so much of their SNAP allotments at the Appellant firm when they clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that these households were trafficking SNAP benefits at the firm. Based on this discussion, trafficking is the most viable explanation for these irregular shopping patterns.

FNS records show there were at least six comparably sized or larger authorized retail food stores within a 0.59 mile radius of Appellant's location that included three supermarkets and three medium grocery stores with the nearest supermarket located on the same block and just around the corner from the Appellant firm. There were many larger stores located slightly further away that included super stores, supermarkets, and other larger grocery stores. The households listed in the charge letter Attachments regularly shopped at these larger stores as well as at additional larger stores located further away during the review period. These larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at Appellant's moderately stocked convenience store.

The difference in the total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount for Kings County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction dollar volume is 12.86 percent larger than like type Kings County stores and its total SNAP transaction count is 28.55 percent larger than the County average while its average SNAP transaction amount is 12.2 percent smaller than the county average. The higher dollar volume and SNAP transaction count would be the expected result of a retail store dividing a large number of high dollar trafficking transactions into smaller dollar value transactions in an attempt to avoid suspicion. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous Attachments do not represent legitimate food purchases. The Office of Retailer Operations and Compliance considered all of these to be indicators of unusual and suspicious activity.

Appellant's contentions regarding this charge are addressed below.

Appellant is mistakenly equating a firm having sufficient stock to be qualified as a SNAP retailer with being a well-stocked store. While the Appellant firm does have adequate stock to qualify as a SNAP retailer, one has to look at the quantity and variety of a store's eligible food inventory before one can make a statement as to how well a store is stocked. A store can meet the minimum stocking criteria under Criterion A to become a SNAP retailer by offering for sale, on a continuous basis, no fewer than three different varieties of food items in each of the four staple food categories with a minimum depth of stock of three stocking units for each food variety, and at least one variety of perishable foods in at least two staple food categories. In other words, a store can qualify with as few as 36 units of staple foods.

Appellant's arguments supporting the legitimacy of the transactions listed in the charge letter Attachments are based on the Appellant firm being well-stocked. This is evidenced by Appellant's claims:

- The store occupies approximately 3,000 square feet and sells a variety and quantity of staple food items to the surrounding community such as: fruits, vegetables, bread, milk, butter, cheese, bacon, beef, pork, fish, lunch meat, eggs, canned meats, pasta, rice, chips, muffins, cookies, and additional food items. Inventory at this store is replenished on a rolling basis and depending upon demand.
- The store offers its clientele a considerable inventory in breads, cereals, and meats with such a variety of stock that a household could satisfy all of their needs on a single shopping trip with enough food to make meals for their families.
- With respect to inventory quantity, it is not the Appellants' position that customers are stacking \$196.43 worth of canned foods on the counter and buying them. Instead, these purchases involve high priced items (which include Enfamil, rice, and Boar's Head Lunch Meat/Cheese).

The December 31, 2017, store visit report shows that the store cashier stated the store's size was only 1,200 square feet, not the 3,000 square feet claimed by Appellant. The 1,200 square feet is also consistent with the previous FNS store visit on October 27, 2015, in which the contractor estimated store size as being 1,404 square feet.

It is unknown why Appellant cited \$196.43 when there were much larger transactions, up to \$319.90, during the review period. Appellant's claim that the high dollar value transactions in this Attachment are due to purchases of Enfamil, rice, and deli meats/cheeses is improbable. As previously stated, most SNAP recipients with small children are also WIC recipients and would be purchasing formula using WIC vouchers, not their extremely limited SNAP benefits. The firm carried several 20 pound bags of regular rice while other nearby larger stores would also likely stock comparably sized or even larger bags. Additionally, even a 20 pound bag of rice would last several days even with a large household. Lastly, SNAP households have an extremely limited food budget and it is implausible that a household would make multiple large purchases of Boar's Head deli products when less expensive packaged sandwich meats and sliced cheeses were also available.

Even a cursory review of the December 31, 2017, FNS store visit report and photos would show that the firm had a moderate staple food stock that would not compare to that found at nearby super stores and supermarkets where these same households were regularly shopping. The firm's high priced items have been listed previously in this Decision. Appellant's claim that six packs of Ensure and Pediasure both priced at \$16.99 were somehow missed during the store visit is unlikely as they were not included in the store cashier's listing of the most expensive items and are also not supported by the many store visit photos that show only single cans available. While some households may purchase some of the firm's highest priced items, it is unlikely they would be purchased multiple times and would account for the many transactions exceeding \$100.00 in this Attachment. In reality and as evidenced by the FNS store visit, the firm's actual quantity and variety of staple food stock is only moderate making it unlikely that SNAP households that shop at super stores and supermarkets on a regular basis would consider the firm to be their primary grocery store. Accordingly, Appellant's claims regarding the store being well-stocked are not sufficient to prove the legality of the charge letter transactions.

Appellant submitted nine pages containing 18 photos showing a store that is well stocked with staple foods, accessory foods, and ineligible items. Overall, Appellant's photos are similar to those taken during the FNS store visit on December 31, 2017, but show more robust stock with all shelves and coolers fully loaded with a greater quantity and additional varieties of staple foods than was seen during the FNS store visit. In particular, Appellant's photos show significantly more stock in the deli and the meat cases as well as in the fresh produce section. Appellant's photos appear to have been staged in an attempt to discredit the validity of the FNS store visit and to falsely support Appellant's contention that the firm had a substantial inventory and offered a variety of expensive food items. Accordingly, Appellant's staged photos do not provide any evidence to support the legitimacy of the charge letter transactions occurring during the period under review.

Appellant is making assumptions not based on the facts. The question here is why would SNAP households bring multiple persons or use a stroller to help carry groceries at a medium grocery

store offering a moderate stock of staple foods, as proposed by the Appellant, when these same households are already shopping at a variety of larger stores offering a greater quantity and variety of all foods for lower prices and which would have shopping carts and checkouts with scanners. The only believable answer is that they would not. While SNAP households living nearby may make small dollar purchases of a limited number of eligible food items at the Appellant firm for convenience sake, it is unlikely they would consider it to be their primary or even secondary grocery store, especially when there is a supermarket just steps away around the corner. This is supported by the 2011 and 2020 FNS studies previously cited that show SNAP households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket or super store. Participating households typically made several (just over nine on average) relatively small purchases (\$27.36 on average for 2017) with SNAP benefits each month.

Although the subject store may have contained sufficient inventory to satisfy any single charge letter transaction, this does not explain why a SNAP household would spend up to \$319.90 in a single transaction at a medium grocery store with only a moderate stock of staple foods, that is not optimized for bulk sales, and that is located in proximity to superiorly stocked competitor stores. Even if a hypothetical SNAP household consisted of a large number of members, it would still be much more likely to make high dollar purchases at larger competitor stores, such as supermarkets or super stores, that would offer a superior quantity and variety of stock, lower pricing, and ease of both shopping and checkout.

Information obtained during the December 31, 2017, FNS store visit shows that the Appellant firm offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. It is specifically noted that the firm had a limited stock of fresh unprocessed meat/seafood, no frozen unprocessed meat/seafood, no dried seafood, a limited quantity and variety of processed meats and seafood (deli meats, bacon, hot dogs, sausages, small packages of lunch meats, jerky, and canned meat/poultry/fish), no salamis, no brown and serve sausages, no frozen entrees, no frozen dinners, a moderate stock of fresh fruits and vegetables, a good supply of frozen fruits and vegetables, and a moderate stock of canned and packaged staple food items. The fact that tobacco, lottery, alcohol, hot food, health and beauty items, household items, paper items, clothing, diapers, kitchen wares, and newspapers are not eligible for purchase with SNAP benefits also provides no justification for the large transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food dollars, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have multiple large shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions. The firm also had a small checkout area and only two shopping carts that were available to customers thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a moderate stock of staple

food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

The Office of Retailer Operations and Compliance analyzed the 1,399 pages of invoices provided by Appellant after excluding any ineligible items on individual invoices, any invoices dated outside the review period, and any incomplete or illegible invoices. It is noted that 346 invoices were duplicates. It is further noted that numerous invoices had the names of other stores showing that Appellant either accidentally included invoices from other SNAP retailers or was intentionally trying to inflate potential sales at the firm by fraudulently embellishing the store's inventory. FNS gave the firm the benefit of the doubt by including those invoices that did not list a retail store's name as well as those that did not include the year in the invoice date. The review of invoices also shows that many of the SNAP eligible items purchased were inexpensive accessory foods such as soft drinks, snacks, candy, ice cream, and other drinks in addition to many ineligible items such as tobacco, alcohol, household items, paper products, health and beauty items, and other nonfood items. A standard 40 percent markup was applied to the invoice total of \$190,829.06 resulting in potential eligible food sales of \$267,160.68. SNAP and WIC redemptions for the same period amounted to \$139,064.44 showing that the firm did have sufficient food inventory to support its SNAP redemptions during the review period. This analysis did not consider any credit/debit/cash sales which would narrow the gap between the inventory and SNAP/WIC redemptions. It is also noted that an undetermined amount of store staple food stock was being used for the firm's thriving hot food business which would also affect these amounts. While the invoices did show that the firm had sufficient inventory, this alone does not explain the unusual transaction patterns in the charge letter, why the transaction activity at the subject firm varied so significantly from other nearby firms of the same type, the unusual patterns noted, or the household shopping patterns noted in the case.

Based on these discussions, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Other Contentions

The purpose of this review is to either validate or to invalidate the earlier decision of the Office of Retailer Operations and Compliance and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in

administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in 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. Appellant's other contentions are addressed in this section.

In regard to case law cited by Appellant, considerations of relevant legal precedent through case law, or the lack thereof in relation to the present case, are beyond the scope of this review. This review relies upon the statute and regulations governing the SNAP and evaluates whether the decision to impose a disqualification upon the Appellant was in accordance with same and sustainable by a preponderance of the evidence. Appellant's case law references are acknowledged in this context only.

Regarding co-shopping, Appellant's claim is based on a survey that involved interviews with 10 consumers from five two-shopper households in Seattle in 2016. However, a review of the survey report finds no mention of SNAP households being interviewed. This reviewer is also not aware of any co-shopping studies that specifically address SNAP households therefore Appellant's contentions regarding co-shopping are assumptions as opposed to facts and are without any evidentiary value. Additionally, Appellant references a finding from a USDA report on foods typically purchased by SNAP households which states that, "Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional consumers". This shows that SNAP households are not comparable to non-SNAP households in all areas which would likely include co-shopping. Also, unlike non-SNAP households, under SNAP regulations there can be multiple benefit households under the same roof each with its own EBT card and SNAP benefits. This provides additional SNAP benefits in a separate EBT account for individuals such as the elderly or disabled living with family members who have their own shopping priorities or needs. During SNAP eligibility interviews, the family structure is carefully evaluated to determine if multiple households may be authorized which would reduce the numbers, if any, of SNAP recipients co-shopping. Based on this discussion, it seems likely that co-shopping would have no measurable effect on SNAP shopping patterns.

Appellant's claim that SNAP households prefer convenience over savings and selection is also an assumption, not a fact, as no basis has been offered to substantiate this statement. Even if it were accurate, it does not explain why households who are regularly shopping at much larger stores (super stores or supermarkets) would spend comparable or sometimes much greater amounts at the Appellant firm on the same day or within 24 hours.

Appellant offered no evidence to validate its claim of the firm tabulating transactions on a rolling basis as an explanation for the close in time transactions in this Attachment. While a slight possibility of this occurring may exist at some convenience or small grocery stores, the physical layout of the Appellant firm would make it unlikely to be a viable explanation for Attachment 1 as the firm has two cash registers. Speculation aside, the real fact of the matter is that multiple SNAP households would not be making large purchases at a store with a moderate stock of eligible foods when they are already shopping at larger stores offering a greater selection of

foods for lower prices so there would be no need for tabulating transactions on a rolling basis in the first place.

Appellant claims that determinations made by the Administrative Review Branch indicate that the presence of acceptable explanations such as bulk sale discounts, cultural shopping habits, reward points/system, specialized language in areas with many immigrants, specialty and ethnic foods, large households shopping together, multiple households shopping together and exhausting the benefits of one and paying with the next, high priced inventory items, or similar debit and credit transactions would be sufficient to consider reversing the disqualification as other legitimate explanations exist for the Scan C transactions. Appellant also claims that determinations made by certain administrative review officers imply that the presence of acceptable explanations such as sufficient inventory, sales tax documentation, large families shopping contemporaneously, high dollar eligible foods in inventory, specialty or imported foods, miscategorization of the store, sales of large quantities of soda, absence of large local SNAP retailers, a large SNAP population, and bulk pricing or a rewards system would be sufficient to consider reversing the disqualification as other legitimate explanations exist for the Scan F transactions. Appellant cited cases indicating that if such explanations existed, their presence would have changed the outcome of the analysis. While explanations such as those cited are useful in determining whether the charge letter transactions represent legitimate purchases of eligible food items, their mere existence does not provide compelling evidence in support of the transactions being legitimate. Any explanations or documents provided must be fully analyzed to determine their probative value in the matter under review. None of the other decisions cited by Appellant contain the supposed precedents that would be a basis for reversing the determination in the current case.

Please note that this administrative review decision is based on the specific circumstances of this case as documented by materials provided by both the Appellant and the Office of Retailer Operations and Compliance. In addition, this administrative review decision does not establish policy or supersede Federal law, regulations, or policy guidance.

Regarding Appellant's contentions concerning the ALERT system, the record in this case documents that the Office of Retailer Operations and Compliance analyst knew the limitations of the ALERT system and that ALERT does not identify trafficking, but only identifies suspicious transaction patterns. This knowledge was used to conduct a thorough examination and analysis of pertinent information that ultimately lead to the determination of trafficking at the Appellant firm. The record, as previously stated, also shows that the analyst correctly identified like type stores offering the same type of foods and used these stores as comparison stores. The firm had a moderate staple food stock as evidenced by the FNS store visit report and photos and had suspicious transaction patterns. Appellant's information regarding the Correlation Coefficient and the ALERT system is noted. As previously stated, a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. FNS uses the ALERT system to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS conducted an in-depth analysis to determine if a charge letter was issued and if the only plausible explanation for the transactions presented in the charge letter was trafficking.

Appellant claims that co-shopping may account for some of the transaction sets has been previously addressed and will not be repeated.

The various other studies, articles, surveys, etc. offered by Appellant provide no direct evidence pertaining to the subject firm, nor do they provide an explanation for the unusual, irregular, and inexplicable transactions in the matter under review. The USDA report on foods typically purchased by SNAP households shows that recipient shopping habits are not always the same as those of traditional consumers and therefore it is inappropriate for the Appellant to make statements regarding SNAP recipient shopping behaviors, including co-shopping, without having data specific to SNAP recipients.

The Elsevier studies by Dr. Alison Gustafson and Jerry Shannon are noted; however, neither study provides direct evidence pertaining to the subject firm, nor do they provide an explanation for the unusual, irregular, and inexplicable transactions in the matter under review.

Appellant's reference to the FNS Profile of SNAP Households and demographic data for area residents including statistics on households with children or older members as well as the median income of SNAP households is noted. SNAP recipients are by definition low income and most cities and towns have low income neighborhoods so it is not unusual for SNAP authorized retail stores to be located in low income areas with many SNAP recipients. While these characteristics are common to many SNAP retailers, neither they nor the demographic data offered by Appellant provide a justification or explanation for the charge letter transactions.

Regarding the report in the April 2016 edition of Convenience Store News, Appellant claims the data listed specifically addresses SNAP recipient shopping behaviors when a review of the entire report shows it makes no statements regarding SNAP recipients. The FMI's US Grocery Shopping Trends 2016 survey also provides no data pertaining to SNAP households. As previously discussed, the USDA report on foods typically purchased by SNAP households shows that recipient shopping habits are not always the same as those of traditional consumers and therefore it is inappropriate for the Appellant to make statements regarding SNAP recipient shopping behaviors, including co-shopping, without having data specific to SNAP recipients.

Appellant also submitted preprinted, template-style affidavits by 16 supposed regular customers. All 16 were "fill in the blank" forms that are similar (if not identical) to those regularly used by Appellant's counsel. The affidavits state, in part: The customer regularly shops at the store and purchases a variety of grocery items, the customer makes large purchases up to a particular amount, the customer has never been charged extra money to use their SNAP benefits, has never been offered cash back, and their purchases have never included non-food items. It is noted that customer statements routinely deny violative activity. Customers involved in violations would not want to incriminate themselves and would also have a vested interest in helping the retailer retain SNAP authorization, and therefore may misrepresent the truth. As is normally the case, not all blocks were completed on all of the forms and some of the dollar amounts cited and other information provided contained inaccuracies. Two of the alleged customers could not be located in the New York SNAP database while two of the remaining 14 households did not complete any transactions at the firm during the review period. The remaining 12 were found in the database

and did have transactions at the Appellant firm during the review period, as well as at a variety of larger stores including super stores and supermarkets. The 12 households completed a total of only 48 transactions/transaction sets in the charge letter that included seven Scan B2 sets, no Scan C sets, and 41 Scan F transactions accounting for only nine percent of the charge letter transactions/transaction sets. The charge letter included 34 Scan B2 transaction sets, 31 Scan C transaction sets, and 453 Scan F transactions for a total of 518 transactions/transaction sets.

One of the 12 households shopped only six times (\$6.00, \$6.00, \$4.50, \$4.00, \$1.00, and \$0.50) at the Appellant firm with the transactions totaling \$22.00 and with no transactions appearing in the charge letter. The customer completing this affidavit claimed to frequently shop at the firm, to spend up to \$180.00 at the firm, and to expend 60 percent of his benefits at the firm. It is unusual that this household's official home of record was 0.8 miles from Appellant's location as it would pass larger grocery stores on the way to the Appellant firm. This household's SNAP shopping history showed large transactions at several super stores and supermarkets during the review period that included the supermarket just around the corner from the Appellant firm to as far away as New Jersey. Another of the 12 households also claimed to frequently shop spending up to \$280.00 and to expend 50 percent of her benefits at the firm. While this household did shop more frequently at the firm, its largest transaction was only \$64.84 with the majority of transactions being under \$25.00. This household's home of record was only 0.2 miles from the firm, but it also shopped at a variety of super stores and supermarkets located nearby and at a distance with many occurring at the supermarket located just around the corner from the Appellant firm.

Both of these households grossly misrepresented the truth in their affidavits as detailed above. While it is impossible for this Review Officer to know whether these were intentional acts of deception or just faulty memories, they do provide a representative example of the inaccuracy and lack of legitimacy in affidavits in general because the persons writing them historically give inaccurate information. These affidavits, even if well-intentioned, typically do not accurately reflect a household's shopping behavior and provide no explanation for the unusual and suspicious shopping patterns found by charge letter households, particularly considering there is a supermarket with superior stock located just around the corner from the subject firm. While FNS acknowledges the affidavits, they are considered unreliable as they do not prove the legitimacy of the charge letter transactions and thus have no evidentiary value.

The owner and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first

offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. SNAP regulations at 7 CFR § 278.6(a) clearly 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, 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”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Office of Retailer Operations and Compliance staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not 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 the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall 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 and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Office of Retailer Operations and Compliance determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to request or to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Office of Retailer Operations and Compliance determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

It is noted for the record that the March 15, 2018, FNS charge letter stated that, “If you request a CMP, you must meet each of the four criteria listed and provide the documentation as specified within 10 calendar days of your receipt of this letter. No extension of time can be granted for making a request for a CMP or for providing the required documentation.”

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not request a CMP or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Office of Retailer Operations and Compliance’s decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Office of Retailer Operations and Compliance presented a case that Appellant has likely trafficked in SNAP benefits. Their 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 consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store’s staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Office of Retailer Operations and Compliance properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP

regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

April 24, 2023