

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

Walton Deli And Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0248974

FINAL AGENCY DECISION

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

ISSUE

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

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

Walton Deli And Grocery was initially authorized to participate in SNAP on December 6, 2013. In a letter dated August 8, 2022, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of August 2021 through October 2021 and information obtained during a visit to the store by an FNS contractor on August 7, 2021. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the

review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10 days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

In an August 15, 2022, email, Appellant's counsel requested an extension of time for providing a response to the charge letter. The Retailer Operations Division granted the extension. In addition, counsel requested a copy of the store visit report and photographs. The record shows that the Retailer Operations Division provided the requested documents on August 17, 2022.

Appellant, through counsel, responded to the trafficking charges in a letter dated September 19, 2022. Appellant denied that the store engaged in trafficking. Among other contentions, Appellant attempted to explain the irregular transaction patterns as due to the statistical results of the store's normal business operations and circumstances, local demographics, particular shopping habits of the store's clientele, and the availability of inventory at the store. To support these explanations, Appellant submitted studies, articles, and reports about SNAP benefit redemption patterns, grocery shopping trends, customer shopping habits, retailer trends, and recent USDA studies. In addition, Appellant submitted photographs of the store inventory, customer affidavits, a correlation coefficient calculation, Appellant's store policy, and inventory purchase receipts and invoices.

After evaluating Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 27, 2023. This letter informed Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In an email dated January 28, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. After receiving an extension of time to provide additional information in support of its position, Appellant, through counsel, submitted additional information on March 16, 2023.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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

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

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

7 CFR § 271.2 states, in part:

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

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

7 CFR § 278.2(a) states, in part:

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

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

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

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

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 278.6(c) states, in part:

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

7 CFR § 278.6(i) states, in part:

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

SUMMARY OF CHARGES

FNS charged Walton Deli And Grocery with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for August 2021 through October 2021. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

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

APPELLANT'S CONTENTIONS

Appellant, through counsel, submitted a voluminous brief 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 argues, in part, that normal SNAP household shopping behaviors, local business conditions, and other factors can explain the transactions identified in the charge letter. Appellant cites case law and past administrative review decisions in support of its contentions. For purposes of brevity, these broader arguments will not be specifically listed here.

Contentions specific to Appellant's case are summarized below:

- Appellant denies the trafficking allegations.
- The store visit inspector missed recording some higher priced items, including cases of soda for \$38, infant formula for \$25, a 40-pack of water for \$20, deli meats priced at \$13.95/lb., cheese for \$8.95/lb., and cold sandwiches for \$6.99.
- Many of Appellant's customers are SNAP participants from surrounding neighborhoods.
- Appellant is located inside an apartment complex, near high-density housing, public transportation, a sports stadium, and various parks, courts, and schools.
- Regarding Charge Letter Attachment 1:
 - These transactions are the result of Appellant's business practices, forgotten items, co-shopping, and/or the habits of SNAP clientele.
 - Appellant's customers' shopping habits are like those of other SNAP households, which studies show spend more than half of its benefits in the first week and three-quarters by the second week.
 - Customer co-shopping is on the rise.

- A number of SNAP households come into the store multiple times a day, often sending children on separate shopping trips to pick up items from time to time.
- Customers make purchases for friends, for large gatherings, or to satisfy needs that are not obvious.
- There are no logistic barriers to the transactions in Attachment 1.
- Telephone orders caused transactions on this attachment.
- Appellant's inventory is sufficient to account for the transactions.
- SNAP participants shop at Appellant because it is more convenient and/or they lack consistent transportation.
- SNAP customers make back-to-back purchases at Appellant because they are unemployed, bored, or use in-person shopping as a recreation event.
- Regarding Charge Letter Attachment 2:
 - These transactions are the result of Appellant's pricing structure, inventory, co-shopping, a portion of local participants relying on Appellant as a primary grocery, and/or are the normal reflection of SNAP participants' shopping habits.
 - Appellant is not responsible for monitoring SNAP household shopping habits.
 - Sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households. It is reasonable to expect SNAP customers to spend large amounts and/or the majority of their benefits at Appellant's store given its inventory.
 - Households in the charge letter are likely to be large, resulting in large transaction amounts.
 - These are not very large transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
 - The high-priced items in the store do not require the store to have a huge amount of counter space for transactions. Given that a number of items are roughly \$10 each, eight items would not be difficult to carry and could be set in the space set out in the store visit photographs.
 - The transactions are tied directly to the store's inventory and convenience for households that do not have regular access to transportation.
 - Other stores nearby do not offer similar inventory.
 - Once pandemic restrictions were lifted, people flocked to a nearby park for cookouts and would visit Appellant to purchase water, sodas, deli meats, etc.
- In the alternative, Appellant requests a trafficking civil money penalty (CMP). Appellants have trained the store's staff on EBT rules and regulations and have always maintained a policy that SNAP violations will not be tolerated.
- Appellant previously provided the Retailer Operations Division with a number of household affidavits, inventory receipts, and other information it believes supports the store's position that trafficking did not occur.

The preceding represents a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any that have not been specifically listed here.

ANALYSIS AND FINDINGS

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

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

Based on the evidence in this case, the SNAP transactions listed in the August 8, 2022, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

Administrative Reviews Independent of FOIA Process

Appellant alleges it is unable to meaningfully respond to the charges because it is not provided with all the information on which the charges are based. Along with the charge letter, Appellant was provided with a detailed list of suspect transactions and the store visit documentation.

Appellant also contends not holding determinations in abeyance while FOIA responses are pending violates 7 CFR §278.6(b)(1) according to *Triple E Express vs. ROD*, Case No. C0191279 because Appellant is not given a full opportunity to respond. The finding in *Triple E Express* is based on outdated regulations. Since October 26, 2020, holding determinations and administrative reviews in abeyance while FOIA responses are pending is prohibited.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the August 7, 2021, store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the store size, description, available stock, and characteristics. The store visit report noted there were no shopping carts or baskets available for customer use. The visit also noted that the store did not round transaction totals or offer telephone or online orders. The report also described the store's checkout counter space area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than

one customer at a time.

In addition, Appellant provided 44 pages of undated photographs of the store to the Retailer Operations Division. There is no evidence of any dates affixed to the photos, so it is likely they were taken after the firm received the charge letter. However, because there is no way for this review to determine that Appellant's photos reflect store conditions at the time of the review period, this review finds them to be of little probative value.

Appellant contends it carries a significant inventory. The FNS store visit report showed that the firm was a small store offering a limited stock of staple foods. A significant portion of the store's inventory was in accessory foods such as snacks and drinks and a variety of ineligible items. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of nearby stores offering similar stock.

SNAP Transaction Analysis

The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring. During the review period, Appellant conducted an average of more than 34 transactions per month that met the parameters of this attachment.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking.

Appellant contends many of its customers are SNAP participants from the surrounding neighborhoods and that it is located near high-density housing, public transportation, a sports stadium, and various parks, courts, and schools. While this may be true, the Retailer Operations Division identified similar and larger stores within one mile of Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of otherwise unavailable ethnic goods, or special or custom services rendered.

Appellant contends the transactions on this attachment are due to customers making purchases for friends, for large gatherings, or to satisfy needs that are not obvious. Appellant has offered no evidence to support these contentions. As to whether or not co-shopping actually affected Appellant during the review period, this argument is little more than conjecture. Appellant has provided no evidence to show that co-shopping is particularly common among SNAP recipients

in Bronx, New York. Appellant has also not provided any explanation for why, if such behaviors were occurring, these purchases would occur at Appellant much more frequently than at nearby similarly situated stores. It is unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately. Unsubstantiated arguments such as these do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends that back-to-back purchases are because SNAP customers lack access to transportation, and Appellant is more convenient. Agency records reflect that most customers on this attachment frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant. In addition, the Retailer Operations Division identified a superstore, convenience store, and small grocery store within 0.15 miles of Appellant. There is no evidence that Appellant has unique food offerings or greater variety and quantity of inventory than similarly situated stores in the area, and no evidence of a business model that would drive such unusual transaction patterns.

Appellant also stated telephone orders caused some of the transactions in this attachment. However, the contractor report from the store visit completed during the review period noted the store did not offer telephone or online ordering. Again, without evidence supporting this contention, it does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Finally, Appellant contends SNAP customers make back-to-back purchases at Appellant because they are unemployed and bored, because shopping is a recreational activity, or because customers return to the store to make a second purchase after going home. Again, while there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in the attachment indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. Anecdotal arguments offer little insight into the transactions in question and do not verify what took place between the customers and the store clerks at the point of sale.

Without compelling evidence from Appellant to show that the transactions in Attachment 1 were legitimate, this review finds that trafficking was a likely cause of the unusual patterns.

Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transactions in this charge letter attachment were higher than 85% of all convenience store purchase transactions during the review period.

Appellant contends that because sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, it is reasonable to expect SNAP customers to spend large amounts of their benefits at Appellant's store given its inventory. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In reviewing the inspection report, this review also noticed that the firm stocked a limited amount of infant formula, which is typically quite expensive, often between \$15.00 and \$25.00 per can. The inspector appeared to make no effort to discover the prices of these items. It is noted, however, that while infant formula is eligible for purchase with SNAP benefits, this item is also part of the food package for participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). It is unlikely that SNAP households would frequently spend limited SNAP funds on expensive infant formula when they could make such a purchase with WIC benefits in a WIC-authorized store.

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

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant contends people flocked to the store to buy water, sodas, deli meats, etc., for cookouts at a nearby park after the pandemic restrictions were lifted. Appellant also stated that other stores nearby do not offer similar inventory. Appellant has not provided evidence to support these contentions. Anecdotal or unsubstantiated arguments offer little insight into the transactions in question and do not verify what took place between the customers and the store clerks at the point of sale.

Appellant claims the high-priced items in the store do not require the store to have a huge amount of counter space for transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant's checkout area sits behind a glass or Plexiglass barrier, and transactions are conducted through a small opening. Based on the store layout, infrastructure, and available inventory, it is not credible that Appellant would so frequently conduct such large transactions. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better stocked stores are readily available and in the vicinity of Appellant.

Appellant stated that larger purchases might be because the SNAP households are larger. While this may be true, this does not explain why larger SNAP households are more likely to shop at Appellant rather than other nearby stores offering similar or superior stock.

Appellant claims that the store visit inspector missed some high-priced items, including cases of soda priced at \$38, 40 packs of water for \$20, and deli meats priced at \$13.95/lb. However, the contractor store visit report was completed in collaboration with store personnel, and the store visit photographs supported the contractor report. Appellant has not provided evidence that the items mentioned were stocked and sold in these quantities and noted price points during the review period.

Appellant, through counsel, has argued that it has no control over and no obligation to monitor customer shopping habits. Appellant further argues that the store operates as a primary grocery for some households. With regard to these contentions, it is true that retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how much a household may spend at a store at a given time. It is also true that some households may choose to spend large amounts of their monthly allotment at a single store, especially if that store is conveniently located or offers food items that are not readily available elsewhere. However, as previously stated, the transactions cited in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive stores. The transactions identified in the charge letter are not marginally abnormal, but decidedly so.

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

Competitor Stores:

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed 11 supermarkets, 21 superstores, seven large grocery stores, 46 medium grocery stores, 45 small grocery stores, and 149 other convenience stores within the one-mile radius. The closest superstore is located 0.14 miles from Appellant. This review demonstrates that households shopping at Appellant were nearby a larger store that may have lower prices and better inventory, making it less likely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant's convenience store, and that they would do so recurrently.

Household Analysis:

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

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. The following examples from the Retailer Operations Division show households shopped at better stocked firms on or about the same day as conducting large transactions at Appellant:

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Despite access to larger, better stocked stores, these sampled households conducted multiple transactions in set time frames and transactions that were large based on the observed store characteristics and recorded food at Walton Deli And Grocery.

Comparison with Similarly Situated Grocery Stores:

Appellant is categorized as a convenience store. The Retailer Operations Division compared Appellant's transaction activity to a nearby small grocery store identified as carrying comparable or superior stock. Appellant had substantially more SNAP transactions meeting the parameters of multiple transactions from the same household in set time frames and transactions that were large based on the observed store characteristics and recorded food. In addition, agency records show Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant's inventory, characteristics, and location do not explain why Appellant had more frequent transactions meeting the parameters in the charge letter and a notably higher average transaction as compared to a nearby small grocery store offering comparable stock. In addition, its inventory, location, and characteristics do not appear to explain why Appellant had more frequent large transactions as compared to similar stores in Bronx County. If Appellants arguments about store location, customer shopping habits, and demographics of nearby SNAP participants were causing the questionable transactions at the subject store, it would be expected that similar patterns would exist at other nearby similarly situated stores. However, that is not the case.

Invoices and Affidavits

Appellant contends it previously provided the Retailer Operations Division with a number of household affidavits and inventory receipts that support the store's position that trafficking did not occur.

The Retailer Operations Division compared the store's SNAP redemptions to the available inventory for the review period, as documented by the inventory purchase invoices provided. The Retailer Operations Division determined that the firm lacked sufficient purchased food stock to cover its SNAP redemptions for the review period.

This review considered the markup percentages provided by Appellant and does not agree with the Retailer Operations Division's assessment that the firm lacked sufficient purchase food stock to cover its SNAP redemptions during the review period. However, the invoices in this matter do not persuade this review to reverse the disqualification determination as they offer little insight into what transpired at the point of sale and do not adequately explain the unusual transaction patterns listed in the charge letter.

The Retailer Operations Division analyzed the 16 customer affidavits provided by Appellant and determined they did not explain the unusual transaction activity in the charge letter. Although customer affidavits attested to customers shopping at Appellant for different reasons, analyzed shopping patterns show that households shopping at Appellant, in fact, also shopped at larger, better stocked, and more competitively priced grocery stores, often on the same day.

Additionally, customer affidavits are often unreliable, even if well-intentioned. They typically do not represent a household's actual shopping behavior or demographics because households generally do not retain records of transactions, or it is difficult to recall spending patterns at a specific location.

Evidence of Trafficking

Regarding Appellant's contentions with respect to the reliability of the ALERT system and confirmation bias, 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 the local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. SNAP 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.

Appellant provided a correlation coefficient calculation to the Retailer Operations Division to support its contention that the relationship between ALERT scans and trafficking is weak. Appellant asserts that it has calculated this based on the results of undercover investigations. These contentions are pure conjecture on the part of Appellant. Appellant does not have the necessary data to perform a reliable correlation analysis.

Civil Money Penalty

Appellant now requests, in the alternative, that it be assessed a trafficking CMP and contends to have implemented an effective compliance program to prevent SNAP violations. However, Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification within 10 days of receiving the charge letter dated August 8, 2022, even though it was informed of the requirement to do so.

SNAP regulations, at 7 CFR § 278.6(b)(2)(ii), mandate that a request for a trafficking CMP along with supporting documentation shall be submitted within 10 days of receipt of the charge letter. SNAP regulations, at 7 CFR § 278.6(b)(2)(iii), also state, in part, 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 ... the firm shall not be eligible for such a penalty." Therefore, the Retailer Operations Division correctly determined that Appellant is ineligible for a trafficking CMP in lieu of disqualification.

Case Law and Past Administrative Reviews

With regard to the case law cited by Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

With regard to the prior Final Agency Decisions cited by Appellant, this administrative review decision is based on the specific circumstances of this case as documented by the materials provided by Appellant and the Retailer Operations Division. This administrative review decision does not establish policy or supersede Federal law or regulations. The determination in this case conforms to SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Walton Deli And Grocery was the primary basis for its determination to permanently disqualify the retailer. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by Appellant. Likewise, Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against Appellant, Walton Deli And Grocery, under the ownership of Nassr Alhanshali and Yaser Alhanshali, is sustained.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

AMIE CHURCHILL
Administrative Review Officer

March 27, 2023