

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

**Wan Jia Mini Mart Inc,**

**Appellant,**

**v.**

**Case Number: C0256648**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Wan Jia Mini Mart Inc (hereinafter “Wan Jia Mini Mart Inc” or “Appellant”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Wan Jia Mini Mart Inc.

**AUTHORITY**

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.

**CASE CHRONOLOGY**

In a letter dated October 11, 2022, the Retailer Operations Division informed the Appellant that Wan Jia Mini Mart Inc was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270–282, based on EBT SNAP benefit transactions that “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.” The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). Per UPS confirmation of delivery, the charge letter was delivered to the Appellant at the store address of record on October 12, 2022.

In a response to the Retailer Operations Division of October 18, 2022, the Appellant, through counsel, replied to the letter of charges. The record reflects that the Retailer Operations Division received and considered the information provided prior to making a determination.

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated November 15, 2022, informing the Appellant that Wan Jia Mini Mart Inc was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) in accordance with 7 CFR § 278.6(i) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In an email correspondence of November 26, 2022, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated November 29, 2022.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

### **SUMMARY OF CHARGES**

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

- There were multiple transactions made from the accounts of individual SNAP households within a set time period;
- The bulk of the households' remaining benefits were depleted within short timeframes; and

- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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

## **APPELLANT'S CONTENTIONS**

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

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

- The Appellant requests reconsideration and withdrawal of the permanent SNAP disqualification determination.
- The Appellant denies the trafficking allegations.
- The Appellant would never jeopardize its business by violating the SNAP rules.
- The allegations of trafficking are incorrect as a matter of fact and inadequately supported as reliance solely on patterns of transactions and the large sums which are evidenced solely by a computer with no first-hand knowledge or physical investigation or inspection.
- The Appellant has been operating in the community for the past two years.
- The store visit report incorrectly states that the Appellant does not offer seafood specials. The following seafood specials are offered at the Appellant: frozen dried scallops at \$30.00 per package (30 count); frozen dried razor clams at \$70.00 per package (20 count); and frozen cuttlefish at \$42.00 per package (10 count).
- The store visit report incorrectly states that the Appellant does not offer food bundles/specials/packages (rice, beans, pasta, etc.). The Appellant offers: Thai elephant jasmine rice at \$25.00 per 25 pounds (25 count); sweet rice at \$8.50 per 5 pounds (60 count); Kokuho rice (red) at \$20.00 per 16 pounds (20 count); and Kokuho rice (yellow) at \$15.50 per 16 pounds (20 count).
- The store visit report's list of the six most expensive SNAP-eligible food items is incorrect. The most expensive SNAP-eligible food items stocked by the Appellant are: Frozen dried razor clams at \$70.00 per package (20 count); frozen cuttlefish at \$42.00 per package (10 count); Mazola corn oil at \$36.00 per 2.5 gallons (5 count); frozen dried scallops at \$30.00 per package (30 count); Thai elephant jasmine rice at \$25.00 per 25 pounds (25 count); Kokuho rice (red) at \$20.00 per 16 pounds (20 count); dried packaged seaweed at \$18.00 per package (20 count); and dried packaged dates at \$18.00 per package (20 units).
- The store visit report shows that there are two ice cream freezers. However, this is incorrect as one is an ice cream freezer and the other adjacent freezer is full of seafood. Frozen seafood is very popular and the Appellant is constantly restocking its seafood stock.
- The store visit report notes that there were empty shelves. Empty shelves can have a double meaning.
- First, the store visit is based on one visit by USDA on February 3, 2022 with no follow-up visit.
- Also, the store visit was made during the 2022 Chinese New Year which was February 1, 2022. Chinese New Year is celebrated by the large Asian and Chinese community in 5

U.S.C. § 552 (b)(6) & (b)(7)(C) during a time of daily feasts, breakfasts, lunches, and dinners with family and friends. Technically, the spring festival is 15 days, but celebrations start on New Year's eve making it 16 days. You can also say that the holiday season starts in lunar December with the Laba Festival, making it 40 days of celebration. The shelves were empty at the time of the store visit because the store was waiting on food deliveries from vendors.

- The Appellant is not a typical store. The bulk of its business is through bulk purchases of rice, noodles, seafood, and dried goods, all of which are SNAP-eligible items. These result in a large number of high dollar sales.
- The store is located in a low-income area largely populated by an Asian and Hispanic community.
- The Appellant is not understocked but is in fact overstocked to meet the needs of the community.
- With regard to the transactions documented in Attachment 1, the Appellant does not control how many members of the same household shop at the store and how they spend their SNAP benefits. No allegations were made against the Appellant to show that the firm was doing anything illegal.
- On numerous occasions customers will ring up a few items and then find out how much SNAP benefits they have left on their card and then spend the rest of their benefits.
- Customers will co-shop and/or share the same SNAP card.
- Also, customers sometimes pay for and bring heavy/bulk items to their car and then return to purchase additional needed items.
- The Appellant stocks everyday household items such as cooking oils at \$35.00 and \$16.00, various rice ranging from \$8.50 (or \$65.00 for an entire case) all the way up to \$25.00, and various cases of milk and dried goods and expensive seafood. The high priced items or seafood alone can deplete one individual account in one purchase as the seafood can be purchased in bulk.
- With regard to the transactions documented in Attachment 2, it is not difficult to have these transactions when the high price of seafood alone can deplete one account and can be purchased in bulk.
- There are also other high priced items (i.e., cooking oils at \$35.00 and \$16.00, various rice ranging from \$8.50 (or \$65.00 for entire case) all the way up to \$25.00, and various cases of milk and dried goods and expensive seafood.
- Regarding the transactions documented in Attachment 3, the store is not a normal store holding inventory of general household food items. Instead it sells large wholesale oils and rice and noodles, dried goods, and seafood. The Appellant spends thousands of dollars per month for its inventory.
- The Appellant has not been cited for prior SNAP violations and always refuses to sell ineligible nonfood items with SNAP benefits when requested by customers.
- A SNAP disqualification would impose a hardship on local SNAP recipients. The next two closest SNAP retailers do not carry close to the same stock as the Appellant.
- A SNAP disqualification would impose a financial hardship on the Appellant.
- The Appellant requests consideration for the imposition of a civil money penalty in lieu of a SNAP disqualification.

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

- Certificate of Incorporation;

- Photos of a chest freezer adjacent to an ice cream freezer with seafood stock;
- Photos of rice;
- Photos of items noted by the Appellant as being the most expensive SNAP-eligible food items in stock as well as photos of additional/other food items;
- Information regarding the Chinese New Year;
- Snapshot of SNAP Retailer Locator and two area authorized SNAP stores; and
- Inventory purchase invoices (22 pages).

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

During the review period of April 2022 through August 2022, Wan Jia Mini Mart Inc was classified as a small grocery store. When the Appellant was authorized by FNS for participation in the SNAP on June 17, 2021, the owner signed a SNAP application for the store and acknowledged he was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 3, 2022 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. The Appellant is a Chinese retail food store/market and the available inventory of SNAP-eligible food at the time of the store visit showed food stock that would be typical of a small grocery store, where households normally purchase a limited number of items. The SNAP-eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, drinks, snack foods, single-serving food items and accessory food items. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 600 square feet in size with approximately 200 square feet of storage area outside of public view which stocked predominantly drinks and alcohol;
- Had one storage walk-in cooler and two storage chest freezers located on the sales floor which stocked ice cream;
- No shopping carts and no hand-held baskets available for customer use;
- One small checkout counter area with limited check-out counter space;
- One specialty cash register (i.e., lottery, Western Union, etc.)
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Did not have optical scanners;
- Did not have a special pricing structure, such as prices ending in \$x.x9 or \$x.00;
- Did not round transactions up or down at the checkout counter;

- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No orders (telephone or on-line) were taken;
- Delivery was not offered to customers;
- Stocked specialty or ethnic/Asian food items;
- Had empty shelves;
- The six most expensive (costing \$5.00 and above) SNAP-eligible food items in stock were Mazola corn oil at \$16.00 per 1 gallon; dried pork at \$16.00 per 18 ounces (6 units in stock); roasted seaweed (16-pack) at \$8.50 per 64 grams (1 unit in stock); ramen at \$7.00 per 20.5 ounces (4 units in stock); roasted seaweed (12-pack) at \$6.50 per 48 grams (6 units in stock); and Ocean Spray cran-raspberry juice drink at \$5.00 per 96 ounces (1 unit in stock);
- No fresh or frozen meats, poultry, or seafood;
- Frozen food stock consisted of ice cream only;
- Did not have a kitchen and hot foods were not sold;
- Did not have a deli or prepared food section and deli meats and cheeses by the pound were not sold;
- Meat items included units of canned fish, canned/potted meat, dried meat, and eggs;
- Dairy products included milk (dairy, soy, and coconut varieties);
- Did not have fresh produce stock;
- Other staple foods available for purchase included such items as juice, buns/rolls, pasta/ramen, corn meal, rice, flour, rice noodles, grits, cereal, nuts, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, sugar, condiments, and cakes/pastries; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, alcohol, lottery tickets, housewares, and household items.

### **Charge Letter Attachments**

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that

questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

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

This charge letter Attachment documents 23 sets of transactions (48 total transactions) that total \$9,036.49 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 15 different households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

#### **5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that the firm does not control how many members of the same household shop at the store and how they spend their SNAP benefits. Also, customers sometimes pay for and bring heavy/bulk items to their car and then return to purchase additional needed items. The Appellant stocks everyday household items such as cooking oils at \$35.00 and \$16.00, various rice ranging from \$8.50 (or \$65.00 for an entire case) all the way up to \$25.00, and various cases of milk and dried goods and expensive seafood. The high priced items or seafood alone can deplete one individual account in one purchase as the seafood can be purchased in bulk.

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

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a small grocery store like the Appellant firm that has a moderate food stock, no fresh produce stock, no fresh or frozen meats, poultry, or seafood, and no frozen food stock other than ice cream. The Appellant's transaction activity is unusual as every transaction in each set of transactions range from \$20.00 to \$480.00 and the average small grocery store transaction in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period was 5 U.S.C. § 552 (b)(7)(E) and 5 U.S.C. § 552 (b)(7)(E) for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) County. The second and third transactions in each set are too large to consist of forgotten items.

The store visit report, which was completed in collaboration with and signed by the store owner, and photographs from the store visit as well as the stock photos provided by the Appellant offer no explanation as to why SNAP customers would routinely shop at the Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The majority of the Appellant's food stock consists of packaged food items, canned items, accessory food items, snacks, and beverages.

In addition, the store visit report and photos indicate that there was only one checkout counter with limited check-out counter space, one cash register and one EBT POS device for use in ringing-up customers, no shopping carts or hand-held baskets available to customers for transporting food

within the store, and no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

The Appellant contends that on numerous occasions customers will ring up a few items and then find out how much SNAP benefits they have left on their card and then spend the rest of their benefits. However, the EBT point-of-sale machine is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances. Therefore, it is not necessary for customers to make a purchase just to find out what they have on balance on their SNAP benefits accounts.

As to whether or not co-shopping and/or sharing of SNAP cards actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping and/or sharing of SNAP cards is particularly common among SNAP recipients in 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If co-shopping and/or sharing of SNAP cards truly impacted Wan Jia Mini Mart Inc as the Appellant suggests, it would stand to reason that co-shopping and/or sharing of SNAP cards would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, during the review period there were 156 SNAP authorized retailers of comparable or larger size located within a 1.0 mile radius of Wan Jia Mini Mart Inc, including 13 super stores, 13 supermarkets, 14 large grocery stores, 55 medium grocery stores, and 61 other small grocery stores, that could meet the nutritional needs of SNAP customers. Some of these area authorized stores offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store.

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

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

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

This charge letter Attachment documents 27 suspicious transaction sets (29 total transactions) which ranged from \$84.00 to \$410.00 and totaled \$6,272.04. These transactions were conducted by 19 different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households.

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

**5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that it is not difficult to have these transactions when the high price of seafood alone can deplete one account and can be purchased in bulk. There are also other high priced items (i.e., cooking oils at \$35.00 and \$16.00, various rice ranging from \$8.50 (or \$65.00 for entire case) all the way up to \$25.00, and various cases of milk and dried goods and expensive seafood.

However, a review of the store visit report, which was signed by and completed in cooperation with the store owner, as well as the stock photos indicate that Wan Jia Mini Mart Inc offers a moderate stock of SNAP-eligible foods with no fresh or frozen meats, poultry, or seafood, no frozen food stock other than ice cream, no fresh produce stock, and has a lack of an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

It is acknowledged that there may be times in which the Appellant stocks seafood, but seafood was not stocked in large quantities during the store visit. While it is acknowledged that the Appellant provided inventory purchase invoices which included purchases from a seafood company as well as photos of seafood located in a freezer, the invoices are dated after the store visit date so it cannot be verified as to when these food items became available for purchase (i.e., whether these have been regularly offered food items since the store's SNAP authorization or whether they were added to the store's stock after the store visit and review period). In addition, the Appellant did not provide any evidence, **5 U.S.C. § 552 (b)(7)(E)**, to show that bulk purchases of seafood, rice, or other eligible food items is a regular occurrence at the store.

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

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

This charge letter Attachment documents 411 SNAP transactions, as large as \$601.50, that total \$68,613.33. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the store is not a normal store holding inventory of general household food items. Instead it sells large wholesale oils and rice and noodles, dried goods, and seafood. The Appellant spends thousands of dollars per month for its inventory. The store visit report incorrectly states that the Appellant does not offer seafood specials. The Appellant offers three different varieties of frozen seafood priced at \$70.00 to \$30.00 per package, with multiple units of each item in stock. The store visit report incorrectly states that the Appellant does not offer food bundles/specials/packages as the Appellant offers four different kinds of rice in bulk priced at \$25.00 to \$8.50, with multiple units of each item in stock.

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

The store visit observations indicate that the Appellant is a small grocery store which measures approximately 600 square feet in size with approximately 200 square feet of storage space outside of public view which stocked predominantly drinks and alcohol and the store had one storage walk-in cooler. While the Appellant contends that one of the store's two chest freezers stocks seafood, the store visit observations indicate that both chest freezers stocked ice cream only. The stock of SNAP-eligible foods is moderate with no fresh or frozen meats, poultry, or seafood, no fresh produce stock, no frozen food stock other than ice cream, and lacks an abundant depth and breadth of staple foods. The store visit observations also indicate that the firm offered no special or custom services to customers, such as on-line or telephone orders and/or delivery services, which would entice SNAP customers to utilize the subject store over other area authorized retail stores.

It is acknowledged that there are bags of rice visible in the store visit photos that are not listed on the store visit report's list of high priced SNAP-eligible food items, and that the high priced items list provided by the store owner differs from the list noted in the February 2022 store visit. It is also acknowledged that the Chinese New Year celebration very likely may have affected store stock at the time of the store visit. However, the store visit is meant to be a snapshot of one day in time at the store. The discrepancies between the stock photos and food lists provided by the Appellant and those noted during the store visit are irrelevant, as even if the prices and items were correct as provided by the Appellant, they do not explain the unusual transactions noted in the charge letter. In addition, the Appellant did not provide any evidence, 5 U.S.C. § 552 (b)(7)(E), to show that purchases of high priced or bulk items resulted in the unusual transactions noted in the charge letter.

As noted previously, the firm had only one checkout counter with limited check-out counter space, one cash register and one EBT POS device for using in ringing-up SNAP transactions, and no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases. The

customers would have no place to put large purchases. In addition, there were no shopping carts and no hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The Appellant contends that it is not understocked but is in fact overstocked to meet the needs of the community. While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a small grocery store) are for legitimate purchases. According to the store visit, the subject store did not have inventory to support the numerous large transactions.

The Appellant contends that the store visit report's list of the six most expensive SNAP-eligible food items is incorrect. The six most expensive SNAP-eligible food items stocked by the Appellant are priced at \$70.00 to \$18.00 each, with multiple units of each item in stock. However, the store visit report, which was completed in collaboration with and signed by the store owner, indicates that the six most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Mazola corn oil at \$16.00 per 1 gallon; dried pork at \$16.00 per 18 ounces (6 units in stock); roasted seaweed (16-pack) at \$8.50 per 64 grams (1 unit in stock); ramen at \$7.00 per 20.5 ounces (4 units in stock); roasted seaweed (12-pack) at \$6.50 per 48 grams (6 units in stock); and Ocean Spray cran-raspberry juice drink at \$5.00 per 96 ounces (1 unit in stock). Even if there were a few SNAP-eligible food items costing \$5.00 or more not noted in the store visit report that are stocked by the store, the Appellant did not provide adequate evidence of continuously purchasing inventory throughout the review period to satisfy the large transactions documented in Attachment 3 (See Invoice Analysis section of this Final Agency Decision).

#### 5 U.S.C. § 552 (b)(7)(E).

It is important to note that after the Appellant received the charge letter on October 12, 2022, there was a significant drop in flagged SNAP transactions as compared to the previous few months. If the large and frequent transactions were occurring for legitimate reasons, this would not be the case.

#### 5 U.S.C. § 552 (b)(7)(E).

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

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or super store. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better-stocked stores are readily available and in the vicinity of the Appellant firm. The Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price

advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. The Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, 5 U.S.C. § 552 (b)(7)(E). Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

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

### **Evidence of Trafficking**

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

### **Invoice Analysis**

The Appellant submitted inventory invoices substantiate the firm’s inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period. FNS conducted an analysis of the inventory purchase invoices provided for the review period months. 5 U.S.C. § 552 (b)(7)(E), the invoice analysis indicates that the firm lacked sufficient purchased food stock (5 U.S.C. § 552 (b)(7)(E)) to cover its SNAP redemptions for the review period. The analysis also does not account for any non-SNAP purchases (cash, credit and debit card, etc.) of food items at the Appellant. In sum, the invoices do not explain the questionable transactions at the Appellant.

### **Compliance History**

The Appellant is correct that this business has never had a compliance problem with SNAP in the past. However, 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 the violations upon which they are based. There is no provision in the Act, regulations, or agency policy that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

### **Customer Hardship**

With regard to the Appellant's contention that a SNAP disqualification would impose a hardship on participating area SNAP households, 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

### **Financial Hardship**

With regard to the Appellant's contention that a SNAP disqualification would impose a financial hardship on the firm, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

In the October 11, 2022 charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their charge letter.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

While the Appellant's request for consideration for the imposition of a civil money penalty in lieu of a permanent disqualification for trafficking was timely submitted, the record supports that the firm did not timely submit substantial evidence and documentation of its eligibility within the 10 days specified in accordance with 7 CFR §278.6(b)(2)(iii). Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

### **CONCLUSION**

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

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Wan Jia Mini Mart Inc is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

March 6, 2023