

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

Windsor Travel Plaza,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0249229

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 Windsor Travel Plaza (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 Windsor Travel Plaza.

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

Windsor Travel Plaza was initially authorized to participate in SNAP on January 25, 2010. In a letter dated December 29, 2021, 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 March 2021 through August 2021 and information obtained during a visit to the store by an FNS contractor on August 30, 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).

On January 10, 2022, Appellant, through counsel, provided a written reply to the charge letter. Appellant also provided approximately eight undated photographs of the store's inventory, a one-page document titled "Windsor Travel Plaza Food Cards, Food Stamps, Food Coupons Guideline and Policy," and two screenshots of maps.

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 February 3, 2022. 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.

On February 14, 2022, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

On April 25, 2023, the administrative review was reassigned to review officer Amie Churchill.

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 Windsor Travel Plaza 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 March 2021 through

August 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 denies the trafficking allegations.
- Appellant requests a civil money penalty in lieu of disqualification.
- Appellant is not permitted to force picture identification for SNAP recipients.
- There is no evidence that Appellant is selling ineligible items in exchange for SNAP benefits or engaging in SNAP benefit trafficking.
- Appellant has significantly more grocery and bulk grocery items than other convenience stores in the area. Other convenience stores do not offer the same combination of location and the large quantity of grocery products as Appellant.
- Appellant offers bulk goat meat, chicken nuggets, catfish nuggets, shrimp, and other large quantities of fish and chicken, frozen pizzas, nuts, and many other options for meat and jerky. This is the only store in the immediate area for these items.
- Because Appellant is located at an interstate exit, it is common for travelers to stop and buy their groceries for their trips.
- Large quantities of cheese curds are a popular item at the store.
- There are many SNAP recipients in the area.
- Many people in the area do not have adequate transportation. The store's location is not on a bus line.
- The nearest grocery store is 3.1 miles away.
- SNAP recipients need to do business with Appellant due to a lack of other viable options.
- Disqualification from SNAP would cause Appellant to close its business and cause great hardship to area customers using SNAP.
- Due to COVID-19, many customers prefer to do large transactions, so they do not have to go out as often.
- Appellant can obtain affidavits from customers stating they like to purchase large quantities of food at the store.
- Large grocery orders or multiple visits to a store in a day are not atypical.
- Appellant has no prior SNAP violations.
- Many SNAP households do not have the education and knowledge to realize they could find better deals at a warehouse or traditional grocery store.
- Appellant regularly replenishes their stock.

In support of these contentions, Appellant provided eight undated photographs of the store's stock, mapping screenshots showing the store's location and the distance to a nearby grocery store, a one-page undated compliance policy, and a one-page screenshot from Apartments.com showing the available apartments in the town of Windsor, Wisconsin.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented and evidence submitted.

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 December 29, 2021, 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.

Lack of Evidence

Appellant contends there is no evidence that Appellant is engaging in SNAP benefit trafficking.

With regard to this contention, this review concedes that 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. The USDA employs a computerized fraud detection tool 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. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a), which 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.]

Prior to a disqualification determination, the accused firm is given an opportunity to reply to the charges and provide any information it wishes in order to justify the transaction activity detailed in the charge letter.

This review has thoroughly examined the documentation and information provided by the Retailer Operations Division. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores with similar characteristics, and then completed a thorough analysis before concluding that trafficking was likely occurring.

It is important to restate here that in an appeal of adverse action, the onus is on Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. Despite being given a specific list of questionable transactions in the charge letter, Appellant has not offered any compelling evidence, such as itemized cash register receipts or other transaction records, to show that the specific transactions in question were legitimate purchases of eligible food. As such, Appellant’s contention provides no basis for dismissing the charges or for mitigating the penalty imposed.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the August 30, 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, and characteristics. 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.

On review, Appellant submitted eight undated photographs of the store’s stock. The photographs appear to show greater levels of stock than what the contractor found during its inspection. However, based on the product expiration dates in the photographs, it is likely these photographs were taken after the firm received the charge letter. As such, this review cannot consider them a valid representation of store conditions at the time the alleged trafficking violations were committed.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery 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 similarly-sized competitors.

SNAP Transaction Analysis

While SNAP households are not limited in the number of times they may use their SNAP benefit card or how much eligible food they may purchase in SNAP transactions, government analyses have found that stores likely trafficking SNAP benefits have particular transaction patterns or characteristics that are inconsistent with the transaction patterns and characteristics of similarly situated stores. 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.

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. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale.

Appellant stated it is not able to monitor SNAP household transaction activity by forcing picture identifications. Regarding this contention, retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how often a household visits a store or how much a household may spend at a store at a given time. However, as previously noted, the transactions cited in the charge letter display patterns that are inconsistent with the store's documented physical characteristics and food inventory and are significantly different from patterns found in nearby competitive stores – even those competitors who sell similar food items. The transactions identified in the charge letter are not marginally abnormal, but decidedly so.

Appellant contends that SNAP households in the area rely on the store because of transportation limitations, the nearest grocery store is 3.1 miles away, and Appellant is the only store in the area that offers a large quantity of grocery products. In support of this contention, Appellant provided mapping screenshots showing the location of Windsor Travel Plaza and a nearby grocery store. Appellant provided no evidence that nearby SNAP households have transportation limitations or that other stores in the area do not offer similar foods. The Retailer Operations Division provided examples of households who shopped at better stocked firms on or about the same day as conducting repetitive transactions over short periods of time at Appellant. In addition, Agency records show that more than 72% of the households on this attachment conducted a transaction at a large grocery store, supermarket, or superstore within one day of an Attachment 1 transaction. These households also completed 87% of the transactions on this attachment. This would suggest

that transportation and access to larger, better stocked stores was not an issue for the majority of the households on this attachment.

Without compelling evidence which demonstrates that the transactions were legitimate purchases of eligible food, it is reasonable for this review to conclude that the patterns listed in Attachment 1 were likely due to trafficking violations.

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).

Appellant contends it is the only store in the area that offers bulk goat meat, chicken nuggets, catfish nuggets, shrimp, and other large quantities of fish and chicken, frozen pizzas, nuts, and many other options for meat and jerky. The store's inventory and characteristics, as documented during the August 30, 2021, store visit, did not support Appellant's contention or the frequency of large transactions reflected in this attachment. The highest priced item identified at the store - a 2.2 lb. bag of goat meat priced at \$19.99, had just one unit in stock. The other five highest priced items identified were priced between \$6.29 for a 12 oz. bag of Kraemer Cheese Curds and \$8.99 for a three-ounce bag of jerky. The store did not appear to offer any fish or shrimp at the time of the store visit. Other than the undated photographs discussed above, Appellant has provided no evidence to support that the store sold items in bulk or offered large quantities of grocery products. With the possible exception of the single bag of goat meat noted during the store visit, 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 for SNAP eligible items.

Given that Appellant firm did sell a selection of staple foods as well as other SNAP eligible items, including snacks and drinks, it is likely that there would have been an occasional instance where the transaction amount was high, perhaps exceeding \$40.00. As such, there may be some legitimate SNAP transactions among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similarly situated competitors. 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering the store's limited staple foods, a constricted checkout area, and no shopping carts or baskets to help customers transport large amounts of food, this review finds it difficult to believe that every transaction in this attachment was a legitimate purchase of eligible food. Based on the store layout, infrastructure, and available inventory, it is not credible that Appellant would so frequently conduct such large transactions.

Appellant stated because the store is located at an interstate exit and near a major highway, it is common for travelers to stop and buy groceries for their trip. Appellant provided no evidence to support this contention. 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.

Appellant contends that, due to COVID-19, many customers prefer to complete large transactions, so they do not have to go out as often. While this may be true, Appellant provided no evidence that this customer shopping habit caused the large dollar transactions in Attachment 2. Agency records show that 71% of the SNAP households in this attachment completed a

transaction at a large grocery store, supermarket, or superstore within one day of an Attachment 2 transaction. It is improbable that households would choose to spend large dollar amounts at Appellant, a convenience store, if their purchases consisted solely of eligible food items that could be purchased at the large grocery stores, supermarkets, and/or superstores at which they were already shopping.

Appellant stated that cheese curds are a very popular item that attracts customers to the store. Appellant provided no evidence to support this statement. However, Agency records show another authorized store located 0.03 miles from Appellant that specializes in cheese products, including cheese curds. It appears access to cheese curds is readily available in the vicinity.

The Retailer Operations Division concluded that Appellant offered insufficient evidence to support that the unusual transaction pattern was the result of eligible food sales. Such evidence could have included: invoices to support the firm carried sufficient eligible food stock to meet its SNAP redemptions, recipient statements, or detailed cash register receipts to show the transactions in the charge letter were the sales of eligible foods exchanged for SNAP benefits.

In a case such as this one, which is based on an analysis of transaction data, 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.

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 three 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).

Each household lived miles from Appellant and regularly shopped at larger, better stocked stores. However, despite this access to larger, better stocked stores, these sampled households conducted multiple transactions in set time frames and/or transactions that were large based on the observed store characteristics and recorded food at Windsor Travel Plaza.

Comparison with Similarly Situated Convenience Stores:

The Retailer Operations Division compared Appellant's transaction activity to the transaction activity of two nearby convenience stores it determined offered comparable 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.

Appellant's average transaction of 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant's documented inventory, characteristics, and location do not appear to explain why Appellant had more frequent transactions meeting the parameters in the charge letter and a notably higher average transaction as compared to nearby convenience stores. If Appellant's arguments about store location or pandemic shopping habits were causing the questionable transactions at the subject store, it would be expected that similar patterns would exist at other nearby convenience stores. However, that is not the case.

Hardship to SNAP households

Appellant asserts that disqualification would be a hardship for SNAP households relying on the store. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store, since the normal shopping pattern of such SNAP participants may be changed due to the disqualification. Section 278.6(f)(1) of SNAP regulations provides for Civil Money Penalty (CMP) assessments in lieu of disqualification in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating retail food store in the area to meet their needs. However, this regulation also sets forth the following specific exception: "A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification." Because the matter at hand involves a permanent disqualification, this CMP provision is not applicable.

No Undue Hardship to Appellant

Appellant maintains that disqualification would cause Appellant to close its business. Economic hardship is a likely consequence whenever a store is permanently disqualified from SNAP participation. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from such a penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA virtually meaningless. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity to competing stores and other participating retailers who are complying fully with program regulations, and also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that it will incur economic hardship due to an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the imposed penalty.

Compliance History

Appellant contends that it has had no prior SNAP violations.

A record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

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

Civil Money Penalty (CMP)

When a store is subject to permanent disqualification for trafficking, the only way it can be eligible for an alternative sanction is to meet the CMP criteria found in 7 CFR § 278.6(b)(2) and (i). These regulations explain that a firm must specifically request a CMP in lieu of permanent disqualification and submit “substantial evidence,” which demonstrates that the firm had previously established and implemented an effective compliance policy and program to prevent SNAP violations. This request and submission of evidence must occur within 10 days of receipt of the charge letter.

In this case, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of disqualification under 7 CFR § 278.6(i) because it did not submit, within the specified timeframe, substantial evidence that fulfills each of the four criteria of 7 CFR § 278.6(i), demonstrating “that the firm had established and implemented an effective compliance policy and program to prevent violations.”

The standards of eligibility for a trafficking CMP are high. They require substantial proof that a compliance policy and program was established and implemented prior to the occurrence of violations. These standards exist to thwart attempts to falsely present compliance policies and programs that were not actually implemented prior to violations. As Appellant did not provide the required supporting documentation, the Retailer Operations Division did not assess a CMP. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

CONCLUSION

An analysis of Appellant’s EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Windsor Travel Plaza from SNAP

participation. 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, Windsor Travel Plaza, under the ownership of Harmeet Singh, 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

April 28, 2023