

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

**H & A Candy Grocery 1 Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0245660**

**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 H & A Candy Grocery 1 Corp (hereinafter “H & A Candy Grocery 1 Corp” 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 H & A Candy Grocery 1 Corp.

**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 July 6, 2021, the Retailer Operations Division informed the Appellant that H & A Candy Grocery 1 Corp 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 July 7, 2021.

The record reflects that in an email of July 13, 2021, the Appellant's counsel requested an extension in time for providing a response to the letter of charges. In a letter dated July 14, 2021, the Retailer Operations Division granted counsel's time extension request to August 16, 2021. In that letter, counsel was informed that the time to request a civil money penalty in lieu of permanent disqualification and to provide documentation to support such a request could not be extended.

In responses to the Retailer Operations Division of August 16, 2021 and August 18, 2021, 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 responses and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 18, 2021, informing the Appellant that H & A Candy Grocery 1 Corp 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) 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 a letter postmarked August 25, 2021, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's determination. FNS granted the Appellant's request for administrative review by letter dated September 20, 2021.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from December 2020 through March 2021. This involved the following SNAP transactions patterns which are indicative of trafficking:

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

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

### **APPELLANT'S CONTENTIONS**

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

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

- The Appellant denies that trafficking took place and FNS' case is based upon speculations and an unfair analysis. There is no evidence that trafficking took place.
- When the reviewer came to the Appellant to conduct the store visit the owner was at home. The cashier called the owner to inform him of the visit and the owner mistakenly thought the reviewer was an agent for the EBT POS device to change the machine.
- The owner screamed at the reviewer and told him he was not interested and asked him to leave the store. They got into a heated argument. The reviewer in turn did not write a fair report and missed most of the items sold at the store. He did not take photos of the food packages like frozen meat and chicken and expensive infant formulas.
- The reviewer noted the most expensive food items as costing from \$5.99 to \$11.99. However, he missed infant formula and meat packages which range in price from \$13.50 to \$39.99. The Appellant also sells cases of water and other drinks.
- With regard to the transactions documented in Attachment 1, the Appellant has many times sold cases of infant formula, wholesale package of cold cuts, or energy drinks to SNAP customers.
- Some households visit the store several times and purchase the same products.
- Many times members of the same SNAP household will make purchases at different times using the same EBT card. The Appellant cannot stop them from making these purchases.
- These transactions are very possible and reasonable. Transactions made within two or more days is certainly not a short timeframe for a family expenditure.
- Some SNAP customers allow friends or other known people to use their SNAP card to purchase groceries.
- The transactions documented in Attachment 2 are the result of large purchases of expensive food cases such as Red Bull, Nutriment, cold cuts by weight, and Enfamil infant formula.
- The number of transactions for the entire review period are very few, less than ten transactions.
- The store is always stocked with a lot of groceries which customers like to purchase.
- The submitted inventory invoices for the review period substantiate the firm's inventory and demonstrate that there was adequate eligible food items to account for the transactions during the review period.

- The Appellant’s sales increased significantly after the pandemic as most of the customers’ benefits increased resulting in an increase in their spending.
- The Appellant is located close to shelters, RC centers, and housing projects, of which the majority of people use SNAP benefits to purchase food.
- The housing residents are allowed to go out once or twice every week and they shop for enough food to cover their mandatory stays.
- They also go out in groups and buy each other food items.

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

- Purchase invoices/receipts for review period (12 pages);
- A one-page written statement, dated August 9, 2021, from Odyssey House (housing shelter) stating that during the period of December 1, 2020 - March 31, 2021 the shelter’s residents went to the Appellant to purchase food items by groups; and
- Five letters from food distributors showing total sales to the Appellant for the review period. The letters are not itemized to show SNAP-eligible food purchases.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

FNS authorized H & A Candy Grocery 1 Corp for participation in the SNAP on July 9, 2014. During the review period of December 2020 through March 2021, H & A Candy Grocery 1 Corp was classified as a convenience store. 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 March 7, 2021 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. 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 750 square feet in size with approximately 20 square feet of additional storage area outside of public view which stocked predominantly drinks;
- Did not have storage coolers/freezers;
- No shopping carts and no hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;

- Did not have an optical scanner;
- One small checkout counter area with limited check-out counter space which was surrounded by a plastic barrier;
- Had an ATM or money transfer service;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not utilize an unusual pricing structure, such as prices ending in \$.x9;
- Transaction totals were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- The five most expensive (i.e., costing \$5.00 and above) SNAP-eligible food items in stock were Mazola oil at \$11.99 per 1 gallon (2 units in stock); Tasters Choice coffee at \$11.99 per 7 ounces (1 unit in stock); Café Bustelo coffee at \$8.99 per 7.5 ounces (9 units in stock); Haagen-Dazs ice cream at \$5.99 per 1 pint; and Kellogg's Corn Flakes at \$5.99 per 18 ounces. While not noted on the store visit report, a few units of infant formula were observed in the store visit photos which most likely cost above \$5.00;
- Had some scantily-filled shelves;
- No fresh or frozen meats, poultry, or seafood;
- Frozen food items included ice cream only;
- Did not have a kitchen and hot foods were not sold;
- Did not have a deli area and deli meats and cheeses were not sold by the pound;
- Meat items included units of eggs, meat jerky, and canned fish;
- Dairy included milk (cow and coconut varieties) and infant formula;
- No fresh produce stock;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, grits, buns/rolls, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, cakes/pastries, snack foods, and sugar; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, tobacco products, mobile phones/phone cards, automotive supplies, gift items/party goods/souvenirs, clothing, pet food, and housewares.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

## **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 18 sets of transactions (45 total transactions) that total \$1,847.69 in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 17 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer’s inventory and structure.

The Appellant contends that the reviewer did not write a fair report and missed most of the items sold at the store. He did not take photos of the food packages like frozen meat and chicken and expensive infant formulas. The Appellant has many times sold cases of infant formula, wholesale package of cold cuts, or energy drinks to SNAP customers. Some households visit the store several times and purchase the same products. These transactions are very possible and reasonable. Transactions made within two or more days is certainly not a short timeframe for a family expenditure.

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.

The second, third, and fourth transactions in each set are too large to consist of forgotten items. In addition, the store visit report, which was completed in cooperation with a store employee and with verbal permission from the store owner, as well as the accompanying photographs offer no explanation as to why SNAP customers would routinely shop at H & A Candy Grocery 1 Corp multiple times during a short period or purchase such a large volume of items, there being no great variety or advertisements of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The majority of the Appellant’s food stock consists of packaged

food items, canned items, accessory food items, snacks, and beverages. The store also 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. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store. The Appellant has provided no evidence to substantiate its contention that the reviewer did not write a fair report and missed most of the items sold at the store.

The store visit observations also indicate that the firm had one cash register and one EBT POS device and the check-out area was limited in size and it was surrounded by a plastic barrier. In addition, there were 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 customers have no place to put multiple purchases or carry the items while shopping.

The Appellant contends that many times members of the same SNAP household will make purchases at different times using the same EBT card and some SNAP customers allow friends or other known people to use their SNAP card to purchase groceries.

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 New York, New York. If co-shopping and/or sharing of SNAP cards truly impacted H & A Candy Grocery 1 Corp 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 203 SNAP authorized retailers located within a 1.0 mile radius of H & A Candy Grocery 1 Corp, including 13 supermarkets and 14 super stores, that could meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than H & A Candy Grocery 1 Corp and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at H & A Candy Grocery 1 Corp 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.

## **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This charge letter Attachment documents 283 SNAP transactions, as large as \$84.49, that total \$12,973.21. 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 always stocked with a lot of groceries which customers like to purchase. These transactions are the result of large purchases of expensive food cases such as Red Bull, Nutriment, cold cuts by weight, and Enfamil infant formula. The reviewer did not take photos of the food packages like frozen meat and chicken and expensive infant formulas.

However, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as H & A Candy Grocery 1 Corp to have purchases like those included in this Attachment to the charge letter.

The store visit observations indicate that the Appellant had one cash register and one EBT POS device, no optical scanner, and a small checkout area with limited check-out counter space. A review of the store visit report and photos also indicates that H & A Candy Grocery 1 Corp is a convenience store offering a minimal variety and amount of staple food items and does not offer any specialty or ethnic food items that are not available at other area authorized retail food stores. The stock of SNAP eligible foods is minimal with no fresh or frozen meats, poultry, or seafood, no fresh produce stock, and lacks an abundant depth and breadth of staple foods.

The Appellant contends that the reviewer noted the most expensive food items as costing from \$5.99 to \$11.99. However, he missed infant formula and meat packages which range in price from \$13.50 to \$39.99. The Appellant also sells cases of water and other drinks. However, the store visit report, which was completed in cooperation with a store employee and with verbal permission from the store owner, as well as the accompanying photographs show only a few expensive eligible foods in stock (most of which were in limited quantities) that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, specials such as buy one food item and get one for free, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. The Appellant has provided no evidence to substantiate its contention that some of the store's most expensive items were missed by the reviewer.

With regard to the Appellant's contentions with regard to purchases of expensive infant formula, the itemized vendor invoices provided by the Appellant indicate that only drinks/sodas were purchased. The letters from food distributors showing total sales to the Appellant for the review period are not itemized to show SNAP-eligible food purchases. As such, no evidence has been provided by the Appellant showing purchases of infant formula. It is also important to note that the majority of households which qualify for WIC Program benefits also qualify for and are SNAP participants. In most cases, these households utilize their WIC Program benefits to purchase infant foods and

formula in lieu of using their SNAP benefits. As such, it is unlikely that purchases of large quantities of infant formula by SNAP customers is an explanation for these large purchase transactions.

While there is no definition in the SNAP regulations for an excessively large purchase or transaction, FNS makes its determination based on the store type, characteristics and stocked inventory. The burden is on the Appellant to prove transactions FNS identified as large for the store type (in this case, a convenience store) are for legitimate purchases. According to the store visit of March 7, 2021, the subject store did not have inventory to support the numerous large transactions. The store must have stocked inventory to repetitively generate large sales, which was not evident in the store visit.

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.

It is also important to note that the Retailer Operations Division contacted the person from Odyssey House (housing shelter) responsible for the one-page written statement provided by the Appellant which noted that during the review period, the shelter's residents went to H & A Candy Grocery 1 Corp to purchase food items by groups. The shelter employee confirmed that the shelter allows residents to go to the subject store to make purchases. However, he also confirmed that residents of the shelter do not have refrigerators or other spaces to store large food purchases and they do not have stoves, hot plates, or microwaves accessible to them for use in preparing meals. He also confirmed that shelter residents usually purchase snack food items at the Appellant. As such, it is unlikely that purchases of large quantities of foods by shelter residents are a reasonable explanation for the excessively large purchase transactions conducted at the Appellant during the review period.

The Appellant contends that the store's sales increased significantly after the pandemic as most of the customers' benefits increased resulting in an increase in their spending. **5 U.S.C. § 552 (b)(7)(E).**

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

### **Evidence of Trafficking**

The Appellant denies that trafficking took place and contends that FNS' case is based upon speculations and an unfair analysis. There is no evidence that trafficking took place.

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 contends that the 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. The Appellant submitted 12 pages of purchase invoices/receipts and five letters from food distributors showing total sales to the Appellant for the review period. The distributor letters are not itemized to show SNAP-eligible food purchases.

Giving the benefit of the doubt to the Appellant with the assumption that the sales noted by the food distributors were for eligible food purchases and with a 100 percent mark-up, the invoice analysis indicates that the firm lacked sufficient purchased food stock to cover its SNAP redemptions for the review period by \$21,259.51. In sum, the invoices and sales information from food distributors do not adequately explain the questionable transactions at the Appellant.

### **CIVIL MONEY PENALTY**

As previously indicated, the August 18, 2021 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated July 6, 2021 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **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 H & A Candy Grocery 1 Corp 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

December 2, 2021