

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

Home Deli & Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0247272

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

7 U.S.C. § 2023 and 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

Home Deli & Grocery was initially authorized to participate in SNAP on October 13, 2020. In a letter dated August 16, 2021, the Retailer Operations Division charged Appellant with trafficking, as defined in § 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of December 2020 and May 2021 and information obtained during a visit to the store by an FNS contractor on March 6, 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). The letter also stated 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).

Appellant, though counsel, responded to the trafficking charges in an August 25, 2021, voicemail. Appellant did not submit a written response to the charge letter. In the voicemail, Appellant denied the charges, saying Appellant did not notice anything strange or irregular in the transaction amounts or volume.

After considering Appellant's reply and further evaluating the evidence, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated September 15, 2021. This letter informed Appellant that the firm 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 Appellant was not eligible for a trafficking CMP in accordance with § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked September 27, 2021, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 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 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 [SNAP benefits] or trafficking in [SNAP benefits] 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....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e) (1) of this section.** [Emphasis added.]

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, in part:

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

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.

7 CFR § 284.1 Pandemic Electronic Benefits Transfer (P-EBT) states in part:

(a) Overview. Section 1101 of the Families First Coronavirus Response Act (FFCRA; Pub. L. 116-127), as amended, authorized supplemental allotments to certain households. These benefits shall be referred to as Pandemic Electronic Benefits Transfer (P-EBT) benefits This section establishes the retailer integrity regulations for P-EBT for retailers in any State as defined in Section 3(r) of the Food and Nutrition Act.

(b) Definitions. For this section:

(1) Trafficking means the activities described in the definition of trafficking at § 271.2 of this chapter when such activities involve P-EBT benefits.

(2) Firm's practice means the activities described in the definition of firm's practice at § 271.2 of this chapter when such activities involve P-EBT benefits.

(3) Involving P-EBT benefits or involve P-EBT benefits means activities involving PEBT benefits as well as supplemental nutrition assistance program (SNAP) benefits, or only P-EBT benefits.

(c) Participation of retail food stores and wholesale food concerns, and redemption of PEBT benefits. Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of coupons described

at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of coupons for eligible food at authorized firms, also apply to activities involving P-EBT benefits

(e) Penalties. For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve P-EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at § 278.6(e)(1)(i) of this chapter, for trafficking, as defined at § 284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at § 278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of regulations of this section

(6) Disqualify the firm for 1 year for credit account violations as described at §§ 278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve P-EBT benefits.... 5

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at § 278.6(j) of this chapter in an amount calculated using the described formula at § 278.6(j), which shall also include the relevant amount of P-EBT redemptions when calculating the average monthly benefit redemptions....

(g) Administrative and Judicial review. Firms aggrieved by administrative action under paragraphs (d), (e), and (f) of this section may request administrative review of the administrative action with FNS in accordance with part 279, subpart A, of this chapter. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

SUMMARY OF CHARGES

FNS charged Home Deli & Grocery with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for December 2020 through May 2021. The attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

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

APPELLANT'S CONTENTIONS

Appellant, through counsel, made the following summarized contentions as part of its request for administrative review, in relevant part:

- Lists of EBT transactions do not show or demonstrate that the employees at the store committed prohibited EBT trafficking actions or transactions. They merely show that the listed series of EBT transactions did take place during those times by many individual households.
- Actual evidence of alleged trafficking violations is missing, such as actual buy-sell transacted food stamp copies, exchanged cash records, and video recordings or photos of the alleged transactions along with agents' photo identification with detailed narrative evidence.
- The previous owner states in his Declaration, under penalty of perjury, that he has transacted exact or similar alleged EBT transactions at his store throughout his more than 15-years of ownership. This is the usual norm in the store with SNAP customers.
- The current owner, like the previous owner, learned about the SNAP household cycle of buying habit patterns that explain the large and multiple transactions while in training with the previous owner and in witnessing and experiencing the patterns.
- The pattern is due to the timing of when SNAP households receive their SNAP benefits and because households want to stock up on groceries and other items to last for one month or so until SNAP benefits are issued again in the following month. SNAP customers come shop at the store at the beginning of the month when benefits are issued, making purchases of \$100-\$200 at a time. Also, they would casually come in two or three trips to make their purchases even in a single day.
- I order and stock merchandise in time for SNAP customers' beginning of the month purchases.
- The store's SNAP customers are primarily from low-income households. Most of them reside in government subsidized housing next to and around the store amid new sparkling condominiums and high-priced apartments full of high wage earners. They have limited access to transportation and walk to the store from their residences.
- The store caters to SNAP customers the same as other customers as they are worthy customers as well. Some places do not welcome SNAP customers.
- Its one thing for some in the neighborhood to dislike seeing SNAP households in and out of the area. But, without a legal justification basis, some cannot unilaterally and arbitrarily prohibit free and lawful commercial transactions, be they EBT ones, taking place between vendors and customers.
- Your office's characterization of my store as "your type of firm" is insulting and derogatory. I work hard to achieve what I have when I acquired and assumed ownership of the store. I was proud, as were my direct and extended family members.

- To date, I have duly abided by Federal and State law, including SNAP regulations, law, codes and local laws and I have paid my taxes. I also contribute to the local economy by generating economic activity and creating jobs on a limited scale.
- Without concrete trafficking evidence or proof, but only with mere printed assertions, the trafficking permanent disqualification decision is arbitrary, capricious, and an unreasonable determination.
- I am solidly positive that my employees and I did not commit any trafficking acts described in the determination letter.

In support of these contentions, the Appellant submitted the following documentation:

- Declaration by Andrew Im, the store owner, dated September 27, 2021.
- Declaration of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), immediate past owner, dated September 26, 2021.
- Declaration of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), employee, dated September 27, 2021.
- Declarations from 11 store customers.

The preceding may represent only a summary of Appellant's contentions and evidence presented in this matter. However, in reaching a final decision, all the contentions presented received full attention, including any not specifically summarized or explicitly referenced herein.

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 and information obtained during a store visit. 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. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the August 16, 2021, charge letter were indicative of trafficking. As described below, Appellant has not provided 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. The Retailer Operation's Division's decision not to impose a trafficking civil money penalty is also sustained as Appellant did not make a timely request.

Store Visit Report

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant's EBT transactions, but also information obtained from a store visit conducted by an FNS contractor on March 6, 2021, to observe the nature and scope of the firm'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 and photographs documented the following store size, description, and characteristics:

- The firm is a convenience store, approximately 850 square feet in size, with 200 square feet of storage outside of public view.
- The firm had no shopping carts or shopping baskets for customers to use.
- The store had one cash register for food purchases.
- The firm did not use optical scanners to process transactions.
- The checkout area consisted of a small and cluttered counter space where items could be placed for purchase.
- The store's staple food stock met SNAP program eligibility requirements; the food selection was typical of a convenience store. The store did not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- SNAP-eligible, non-staple, accessory food items available at the store included carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sold ineligible nonfood items, including cleaning products, paper supplies, and tobacco products.
- The store had a kitchen or food preparation area, and sold prepared foods. The store had a microwave that customers could not access, but store personnel would heat items for customers at no charge.
- The firm did not have a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- There was a small storage area of approximately 200 square feet that stored mostly beverages out of public view. Store personnel confirmed that no food was stored offsite.
- The store did not sell any specialty or international foods that would normally sell for a high price.
- The store did not take telephone or online orders, nor did it offer delivery.
- The most expensive food items for sale at the store included a 22-ounce package of Frank's brand frozen hot wings for \$11.99; a 96-ounce bottle of Tropicana brand juice for \$9.99; a 11.3-ounce package of Folgers brand coffee for \$9.99; a 6-ounce package of Kirkland brand bacon for \$7.99; a 3.25 ounce package of Jack's Links brand jerky for \$6.99; and a 14-ounce container of Haagen Dazs brand ice cream for \$5.99. The store had limited units of most of these items for sale at the time of the store visit.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that is typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. Given the store's inventory and characteristics, it appears unlikely that SNAP households would visit the store repeatedly or regularly to purchase large quantities of grocery items causing this store's redemption patterns to differ significantly from those of similarly-sized competitors.

SNAP Transaction Analysis

While SNAP households have no limit on the number of times they may use their SNAP 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, which are considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns, to determine if the anomalies can be explained based on circumstances specific to the store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 39 sets of transactions (87 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in short time periods to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory, store type, or structure.

Charge Letter Attachment 1 included 26 sets that each totaled over \$100, with four of these totaling over \$200. Several transaction sets took place in less than an hour, including one that totaled over \$150 in less than four minutes. The largest transaction set, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), included two purchases that each were well over \$100, and took place in under 29.5 hours.

The Retailer Operations Division noted that the store visit report and photographs showed that Appellant's store did not appear to have the capacity or inventory to support large transactions. For example, the store did not have shopping baskets or shopping carts for customers to carry large quantities of groceries to the checkout area. The checkout area was small and cluttered, and the store did not use optical scanners. It would be difficult to transact large amounts of food items given these conditions. Additionally, the store shelves were poorly stocked and the stock room contained predominantly beverages with limited amounts of food items. Of the six highest priced SNAP-eligible items identified in the store, ranging in price from \$5.99 to \$11.99, most had only 3 to 6 units for sale. Only one item, Haagen Dazs ice cream, sold for \$5.99, had more than ten units in stock.

Given the store's inventory and characteristics, it appears unlikely that SNAP households would visit the store repeatedly or regularly to purchase large quantities of grocery items, or that the store could transact large transactions in rapid succession given that the store had limited counter space and no optical scanners, shopping carts, or shopping baskets.

Charge Letter Attachment 2: EBT transactions were large based on the observed store characteristics and recorded food stock. This attachment lists 399 large purchase SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As a point of comparison, during the review

period, the average transaction amount in the State of Washington was \$10.69; in King County it was \$10.88.

Again, the store's inventory and characteristics do not support the frequency of large transactions reflected in this Charge Letter Attachment. The store's inventory is fairly typical of a convenience store, though notably the store visit report showed that Appellant had poorly stocked shelves and limited amounts of high-priced items available for sale. The store did not offer any specialty items or sell items in bulk, which may result in large transaction totals. Accordingly, it is unlikely the store's redemption patterns would differ significantly from those of similarly-sized competitors offering similar food items.

Competitor Stores

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed a superstore less than a half-mile away, as well as two other superstores, two supermarkets, one large grocery store, three small grocery stores, and 22 other convenience stores within the one-mile radius. This comparison demonstrates that households shopping at Appellant likely had access to larger stores that may have lower prices and better inventory. With these shopping options, it is unlikely that SNAP recipients would expend large amounts of their SNAP benefits at Appellant's convenience store, and that they would do so recurrently.

Comparison with Similarly Situated Convenience Stores

Given that there were a number of shopping options near Appellant, the Retailer Operations Division selected two convenience stores near Appellant that were SNAP authorized during the review period to compare to Appellant. Because the stores are close in proximity to Appellant, if the stores are similar in inventory and infrastructure to Appellant, then the sales patterns should be comparable.

The store visit report and photographs for the comparison stores show very similar inventory and inventory levels between Appellant and the comparison stores. However, Appellant's transaction patterns were significantly different from the other two stores during the review period. For example, Appellant had 39 sets of transactions that met the parameters of Charge Letter Attachment 1, while one of the comparison stores had no sets of transactions that met these parameters and the other had only three. Likewise, Appellant had 399 transactions that met the parameters of Charge Letter Attachment 2, while one comparison store had only 31 and the other had 163 transactions that met these parameters. One comparison store had no transactions over \$100, while the other had just one. Appellant, however, had 33 transactions over \$100, including one over \$200. While the Charge Letter Attachments identified Appellant's transaction patterns as significantly aberrant when compared against the averages for convenience stores, the Retailer Operations Division's analysis confirmed that Appellant's transaction patterns were likewise strongly inconsistent with very similarly situated convenience stores.

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 making suspicious transactions at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of four households with unusual shopping patterns at Appellant that also shopped at larger stores. These examples included a household that lived 2.2 miles away from Appellant that shopped at 15 other authorized retailers within an 18-mile radius of Appellant during the review period. Given this household's access to other authorized SNAP retailers and the distance to Appellant's store, this household does not appear to have limited access to transportation. During the review period, this household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant even though the household also shopped at four different super stores and three different supermarkets. This household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in two transactions at Appellant on the same day it shopped at a large chain supermarket. Considering the household shopped at a large supermarket that is likely better stocked and cheaper, it is unlikely the transactions at Appellant on the same day are legitimate purchases of SNAP eligible foods, particularly given the limited inventory available.

A second example included a household that lived near Appellant, but also shopped at 13 other authorized retailers within a 106-mile radius of Appellant during the review period. This household conducted 27 transactions at Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), despite also shopping at four different superstores, a supermarket, and a small grocery store. None of the household's transactions at these larger stores met the parameters of the Charge Letter Attachments; only the household's transactions at Appellant met these suspicious patterns.

Based on the information above, the Retailer Operations Division's analysis demonstrated that households shopping at Appellant during the review period had access to larger stores. In addition, the households' behavior further confirmed that the transaction patterns in the Charge Letter Attachments were suspect.

Evidence of Trafficking

Appellant contends that lists of EBT transactions do not show or demonstrate that the employees at the store committed prohibited EBT trafficking actions or transactions and that actual evidence of alleged trafficking violations is missing. Appellant submitted as evidence declarations from the store owner, the immediate past store owner, an employee, and 11 store customers attesting to the shopping patterns of the store's SNAP customers that may explain the transactions referenced in the charge letter. Appellant denies trafficking SNAP benefits.

Regarding these contentions, SNAP regulations, at 7 CFR § 278.6(a), state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through inconsistent redemption data obtained through a transaction report under an electronic benefit transfer system. USDA uses

ALERT, a computerized fraud detection tool that identifies EBT transactions which form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. As previously provided, the transaction data and patterns are analyzed together with information specific to the store, such as the onsite store visit report including photographs of stock and the store layout, an analysis of SNAP household shopping behavior, and comparisons with similar store types in the local area, to determine if trafficking occurred. This information is used to determine if Appellant's transactions are unusual based on the circumstances specific to the store such as its location, competition, inventory, and customers shopping habits and access to other SNAP-eligible stores.

In this case, the store's transaction patterns, together with the specific circumstances of the store, support a trafficking determination. The transactions in the Charge Letter Attachments were unusual not only in comparison to other convenience stores in the same State or County, but also in comparison to similarly stocked convenience stores in close proximity also serving SNAP households. Further, households shopping at Appellant were also shopping at an array of larger stores, and therefore access and transportation do not appear to be a significant issue. Finally, based on the store visit report and photographs, Appellant's inventory does not appear to be sufficient to support the large purchases in the Charge Letter Attachments. The affidavits submitted by Appellant do not explain why Appellant's transactions would be so different from similarly stocked and located convenience stores that are also serving SNAP customers.

SNAP Customer Access

Appellant contends that its customers are low-income households that reside in government subsidized housing next to and around the store and they have limited access to transportation. Appellant says some places do not welcome SNAP customers and that some in the neighborhood dislike seeing SNAP households in the area. Appellant takes offense to the characterization of the store as "your type of firm."

Regarding these contentions, all stores authorized in SNAP are categorized into store types based on their self-reported sales and the observed store inventory. Appellant was categorized as the store type "convenience store." Accordingly, Appellant's transaction data was compared against stores of the same store type (convenience stores), rather than larger store types such as small grocery stores or supermarkets, to determine if the transaction patterns were irregular during the review period. Any reference to "your type of firm," was simply a reference to the store's categorization as a convenience store and not to the customers served by the store.

Analyzed shopping patterns show that households shopping at Appellant, in fact, also shopped at larger, better stocked, and more competitively priced grocery stores, sometimes on the same day. In some instances, households conducting suspicious transactions did not live in the neighborhood where Appellant is located or shopped at larger stores miles away. While some households shopping at Appellant may have transportation or access issues, the Retailer Operations Division identified households conducting irregular transactions at Appellant that did not have these limitations. Appellant has not provided adequate evidence to show that these irregular transactions are legitimate sales of eligible foods and not trafficking.

Summary

This review finds that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.

On review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and convincing evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. Given the totality of the record, this review finds the transactions listed in the Charge Letter Attachments were, more likely than not, the result of trafficking violations committed by the Appellant. Therefore, the Retailer Operations Division's decision to impose a permanent disqualification against Home Deli & Grocery is sustained.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking civil money penalty in lieu of permanent disqualification under 7 CFR §278.6(i). The letter informed Appellant that it would need to both make the request and provide supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Any evidence submitted by Appellant would have to meet the regulatory criteria for a trafficking civil money penalty, as provided in 7 CFR §278.6(i).

Appellant did not timely request consideration for a trafficking civil money penalty, nor has Appellant submitted evidence that meets the regulatory criteria for the civil money penalty. Therefore, the Retailer Operations Division's determination that Appellant is ineligible for a trafficking 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 EBT transaction record for Home Deli & Grocery was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further support the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against Home Deli & Grocery, under

the ownership of Andrew Y. Im, is sustained. Likewise, the Retailer Operations Division's determination that Appellant was ineligible for a trafficking civil money penalty is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If 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 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.

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.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

January 3, 2022