

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

**Quick Stop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0214940**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Quick Stop 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 in its administration of the SNAP, when it imposed a permanent disqualification against Quick Stop.

**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 February 28, 2019, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of June 2018 through November 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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). The charge letter was delivered to the Appellant by UPS on March 4, 2019.

In a letter dated March 11, 2019, the Appellant, through counsel, stated the Appellant store would contest the allegations in the charge letter and requested case file information under the Freedom of Information Act (FOIA). As a result of the FOIA request, the Retailer Operations Division held further action on the case in abeyance. The Appellant did not request consideration for a trafficking CMP or provide documentation to support such a request.

The agency issued its official FOIA response to the Appellant on March 21, 2019. The FOIA response letter stated that the Appellant could appeal the FOIA response. The Appellant then submitted a FOIA appeal on June 18, 2019. A final decision on the FOIA appeal was issued on February 2, 2021. The Retailer Operations Division then sent a letter dated February 9, 2021 that the Appellant had ten (10) days to respond to the original charge letter. The 10-day response letter was delivered to the Appellant's counsel on February 10, 2021.

The Appellant, through counsel, responded to the original charges in a letter dated February 22, 2021. The Appellant denied that the store engaged in trafficking. Among other contentions, the Appellant attempted to explain the irregular transaction patterns as the statistical results of the store's normal business operations and circumstances, local demographics, particular shopping habits of the store's clientele, and the lack of other SNAP authorized stores in the area. In the alternative, the Appellant requested a CMP in lieu of a permanent disqualification.

In addition to the brief, the Appellant submitted 201 pages of published reports as supporting documents including: (1) Convenience Store News – April 2016; (2) Hartman Group – U.S. Grocery Shopping Trends, 2016; (3) Insight Policy Research – Benefit Redemption in SNAP, Fiscal Year 2017; (4) USDA – Profile of SNAP Household, 2018; and (5) USDA – Nutrition Assistance Program Report, November 2016.

After considering the evidence in the case and the Appellant's contentions, the Retailer Operations Division issued a determination letter dated June 4, 2021. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP. The determination letter was delivered to the Appellant by UPS on June 8, 2021.

In a letter dated and postmarked June 17, 2021, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

## **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a

whole, might 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 covered in the Food & 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 that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 § 271.2 defines trafficking, in part, as:

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 § 271.2 defines eligible food, in part, as:

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

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, **evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]

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 § 278.6(b)(2) states, in part:

(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 a penalty. [Emphasis added.]

### SUMMARY OF CHARGES

The Retailer Operations Division charged the Appellant with trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from June 2018 through November 2018. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** In a series of SNAP transactions, 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).**
- **Charge Letter Attachment 2:** In a series of SNAP transactions, the store conducted 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'S CONTENTIONS

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

- The Appellant store is a convenience store approximately 2,340 square feet in size. The store provides the surrounding community with staple food items such as cereal, bread,

canned meats, milk, butter, cheese, chips, candy, ice cream and additional food items. Inventory during the beginning of the month is typically superior to inventory at the end of the month.

- The purchasing habits of SNAP households outlined in Department studies and other sources such as the Convenience Store News, when compared with the store's inventory, shows that the store stocks the majority of a SNAP household's preferred needs, and has sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.
- The Store Visit Report captured some of the more expensive food items but missed food items such as 4-packs of 16 oz. Red Bull at \$14.99; 2-packs of water at \$10.99; 3-packs of soda at \$9.49 etc. These items are more than enough to account for the higher transactions cited in the charge letter.
- The Retailer Operation Division's decision was influenced by confirmation bias. Ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the hypothesis that trafficking is occurring at the Appellant store.
- The ALERT scan categories are not inherently indicative of trafficking. Additional analysis of households, comparison stores and inventory drives the determination that the scans correlate to trafficking in any given case. However, these details are not readily apparent to a retailer and any decision on the case is based on speculation as to why a household shops as it does.
- The transactions listed in Charge Letter Attachment 1 are all the result of the store's business practices, co-shopping, and/or the habits of the SNAP clientele. The shortest time frame between transactions is one minute and nine seconds – more than enough time to conduct the transactions listed. The transactions at issue consisted of innocent transactions, made at the Appellants store, easily explained by either (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; (3) the participant making a purchase, returning home, and then returning to the store to make a second purchase; (4) a reflection of the normal shopping habits of SNAP participants.
- Regarding co-shopping, different household members will shop separately (using the same account) to pick up different needs, and personal needs, on top of the household's list; and different household participants will travel to the store together to make purchases, and then separate their purchases to track what amount each party has used from their benefits account.
- The store does not have an optical scanner, but product prices are usually consistent and are frequently memorized by the store clerk through sheer repetition. Furthermore, visual identification on the part of the store's clerk is easier than scanning the item. The clerks are aware of the prices of the food items because of experience, so they need only to identify the items and enter the price on the register.
- The store also permits customers to gather products one at a time, on a rolling basis, and bring them to counter and then return for additional items.
- The number of high-priced items in the store do not require the store to have a huge amount of counter space to set all of the items. Given that a number of the items are roughly \$10 each, ten of such items would not be difficult to carry and could be placed on the given space set out in the photographs from the store visit report.
- Customers are carrying food items by hand, using children or friends to transport the food home or are using items like strollers to help transport the items out of the store.

- It is much easier for the customer to get through the spaces of a store like Quick Stop than it is for them to go into a supermarket/superstore. Clients lack transportation so it is easier to shop at the Appellant store rather than travelling longer distances to a supermarket or superstore or being dependent on rides from friends or family. These customers are more likely to come back for supplemental and quick shopping trips than they otherwise would at an average convenience store with an inferior inventory and a further distance from their homes. The inventory offered by the store is of such a variety that it is reasonable to assume a household could satisfy all of their needs on a single shopping trip.
- Regarding Charge Letter Attachment 2, these are not very large transactions. The largest is \$84.06, and the vast majority of the transactions are less than \$60.00. Given the higher priced items in the store, it's not difficult to imagine \$60 worth of groceries being purchased in a single trip – and being transported by hand back to the household's residence. The remainder of the transactions could easily be transported by two people.
- There are no convenience stores, supermarkets or superstores within the area immediately surrounding Quick Stop, which in turn creates a more significant reliance upon small retail food stores. Accordingly, Quick Stop sells more staple food items than the average store. This results in more transactions and higher gross EBT revenue. Furthermore, this store is in an area where there are not immediate competitors around it, the closest supermarket is a Food Lion located 1.66 miles away. This means less competition and higher dollar volume.
- In summary, the transactions included in the Charge Letter Attachment 2 are not trafficking. They are supported by the substantial inventory of the store and are reasonably explained by co-shopping, the store's pricing structure, reliance on the store as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole. That the Department segregated these transactions from the remainder is of little consequence as most other grocers in the store's specific geographical area are likely to have the same number (or greater) of similar transactions.
- In the alternative, the Appellant requests that the store be considered for a CMP under 7 CFR § 278.6(i). The effective compliance policy and program at the store is reflected by the store's significant compliance history.

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

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized Quick Stop for the SNAP on January 23, 2017. At authorization and during the review period of June 2018 through November 2018, the Retailer Operations Division classified the store as a convenience store and not a grocery store. This classification was based on reported sales and observed store inventory.

A store owner signed the SNAP authorization application for the store on December 14, 2016 and acknowledged that the owners were aware of the SNAP regulations and understood those

regulations. That application included a certification and confirmation that the owners 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 Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 17, 2018 store visit conducted by an FNS contractor to observe the nature and scope of the store’s operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Quick Stop was approximately 1,350 square feet in size. In addition, the firm had a storage area of approximately 420 square feet in size. Photos of the storage area revealed that it almost exclusively contained carbonated and non-carbonated beverages, alcohol, and non-food items.
- Exterior signage identified the store name as “PURE.” Store personnel stated that the store name is “Quick Stop.”
- The store did not have any handheld shopping baskets or shopping carts for transporting food within the store.
- The store had a single checkout counter with two (2) cash registers. The store did not have an optical scanner and there were no conveyor belts at the checkout. The counter had a clear space for stacking purchases of no more than two (2) feet by two (2) feet large. This limited space for stacking food at the checkout area made it not conducive to conducting large transactions atypical of a convenience store.
- There was a table with three (3) bar stools and six (6) bar stools were at a row of video gambling machines.
- The store did not offer specials or sales of expensive items such as fresh meat bundles, fresh seafood specials, and/or fresh fruit and vegetable boxes. The store did not carry any international or specialty food items. In general, there was no evidence that the store was selling food items in bulk.
- Store personnel stated that the store did not take telephone orders, online orders, or provide delivery services.

The SNAP eligible food stocked by the store consisted almost exclusively of inexpensive canned and packaged goods typical of a convenience store including bread, pasta, cereal, dairy items, processed meat such as hot dogs and jerky and canned chicken/fish. In comparison to its staple food products, the store sold a larger amount of inexpensive accessory food items such as snack foods, ice cream, potato chips, candy, carbonated sodas, coffee, tea, condiments, and spices. The SNAP ineligible items sold by the store included gasoline, lottery tickets, tobacco products, alcohol, mobile phone accessories, automotive products, health and beauty products, cleaning products, paper goods and miscellaneous other items including adult DVDs.

According to store personnel, the most expensive food items sold by the store were:

- Two (2) stocking units of Folgers coffee (11.3 ounce bags) at \$7.59 each;
- A single six (6) ounce box of 24-pack Lipton Ice Tea at \$7.59;
- 10+ stocking units of Matador beef jerky (3 ounce pouch) at \$6.99 each;
- Two (2) stocking units of canned Spam (12 ounces) at \$5.09 each.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

### **ALERT System**

The ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. The Appellant is correct when it states that this tool does **not** by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and local conditions, and a comparison of similar stores in the area using transaction data from the same review period, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. In addition, the Appellant is always given a chance to explain the specific transaction patterns before the determination letter is issued.

The legality of this methodology is supported by 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, **evidence obtained through a transaction report under an electronic benefit transfer system ....**” [Emphasis added.]

The Appellant states that retailers would not know how to respond to the transaction patterns cited in the charge letter. However, retailers should be in the best position to know their inventory, technology, pricing structure and normal business practices to sufficiently explain why transaction patterns were legitimate. When a retailer cannot offer a plausible or reasonable explanation backed by actual evidence and not just mere speculation, it is more likely true that not true that the transaction themselves were illegitimate.

The Appellant further claims that the Retailer Operations Division was influenced by confirmation bias; however, this is mere speculation on the Appellant’s part and there is no evidence in the case record that would support this assumption.



## **Prior Cases**

The Appellant cites various case law which it claims supports its position on the ALERT system and on other contentions made in the administrative review. Although the Appellant may disagree, considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

The Appellant also cites other administrative review decisions which it states supports its contentions in this case. Please note that this administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede federal law or regulations.

## **Purchase Invoices**

The Appellant, through counsel, provided copies of store purchase invoices/receipts from the review period in an attempt to show that Quick Stop had sufficient food inventory to support its SNAP redemptions. The case record documents that the Retailer Operations Division thoroughly reviewed these purchase invoices. The Retailer Operations Division determined that the store had a sufficient food inventory to support its SNAP redemptions.

However, even if the store had a sufficient food inventory to support its SNAP redemptions, it would still need to explain the irregular SNAP transactions cited in Charge Letter Attachments 1 and 2. Violating stores often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking.

## **Multiple Transactions Made from the Household Accounts within a Set Time Period**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, 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 this convenience store's stock and facilities and are thus indicative of trafficking.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)**

As noted in the store visit report and photographs, the store checkout area was limited and there were no shopping baskets or shopping carts for transporting such a large amount of food within

the store. The Appellant's contention that customers are taking items sequentially to the counter back and forth on a "rolling basis" is not a credible explanation for these transactions.

Particularly egregious transactions include the following which contained identical or nearly identical repeat transactions.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

Other transaction sets occurred over longer time periods and also contained some identical or nearly identical transactions:

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

Most of these transactions were approximately equivalent or larger than the average SNAP transaction at a Georgia supermarket or superstore during the review period.

The Appellant contends that the transactions listed in Charge Letter Attachment 1 are all the result of co-shopping, store inventory and/or the normal shopping habits of the store's SNAP clientele. Regarding the Appellant's "co-shopping" contention, while different household members can use the EBT card, it is unlikely they would conduct multiple irregular large dollar transactions in such a short period of time at a gas station/convenience store. Even the smallest transactions cited in Charge Letter Attachment 1 had an amount which were generally four (4) to five (5) times higher than the average purchase amount for a SNAP convenience store in Sumter County, Georgia. Also, if co-shopping is causing these type of patterns one would expect those patterns to be repeated at nearby competitor stores that offer a similar or superior amount and quantity of staple and accessory food. However, these stores did not exhibit the same irregular transaction patterns that occurred at Quick Stop.

The Appellant states that shoppers may forget to purchase an item and make another transaction or they may come back to finish their order. It is true that sometimes a customer will forget an item or two and come back later to make an additional small dollar purchase. However, the transactions cited in the charge largely consisted of second or subsequent transactions which greatly exceeded the average transaction of a Sumter County convenience store during the review period.

In conclusion, the store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items due to the limited selection of staple food items. In addition, the store's small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and no handheld baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

## **Excessively Large Purchase Transactions**

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, 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 this convenience store's stock and facilities and are thus indicative of trafficking.

### **5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)**

The Appellant contends that the transactions listed in Charge Letter Attachment 2 are all the result of either co-shopping, store inventory, and/or normal SNAP customer shopping habits. Again, the Appellant does not explain how co-shopping leads to excessively large transactions atypical of a convenience store in Georgia. If co-shopping or these other conditions explained this pattern, then this pattern would also be replicated at other convenience stores located in the same area as Quick Stop.

The Appellant references a USDA study that states that SNAP participants tend to buy sweetened beverages, frozen prepared foods and prepared desserts at a much higher rate than traditional consumers. These items are carried by Quick Stop; however, it should be noted that these inventory items are relatively inexpensive purchases as compared to other foods such as fresh meat, fresh poultry, fresh fish, fresh produce or international or specialty foods none of which Quick Stop carried. These more expensive food items are carried at supermarkets and superstores. Yet, Quick Stop had average transactions cited in the charge letter which are greater than those of a Georgia supermarket and almost as high as a superstore. SNAP purchases of snack food, soda, flavored drinks and candy may be typical of a convenience store; however, the irregular transaction patterns cited in Charge Letter Attachment 2 are not typical of a convenience store either in Sumter County or the entire state of Georgia.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, agency mapping systems shows that, during the review period, there were 20 SNAP authorized stores located within a two-mile radius of Quick Stop. These included nine (9) convenience stores, eight (8) combination grocery stores, a large grocery store and two (2) supermarkets. The nearest combination grocery store was only 0.38 miles away. The large grocery store was only 0.40 miles away. The nearest supermarket was 1.33 miles away. Therefore, a lack of access to SNAP authorized stores does not appear to explain the Appellant store's excessively large transaction patterns during the review period.

The year-end study for FY 2017 on SNAP benefit redemption patterns<sup>1</sup> concluded that households most often redeemed their benefits at supermarkets and superstores with only 4.6 percent of all households never shopping in a supermarket or superstore and that this was particularly true for household's whose total monthly benefit was under \$50. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with an extremely limited selection

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<sup>1</sup> Ibid. Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program in Fiscal Year 2017, September 2020.

of staple foods like Quick Stop. The Appellant states that based on a Food Marketing Institute study, in 2016, consumer's shopping habits trended towards an increase in the use of convenience stores, small grocers, and ethnic food stores. That may be true, however, FNS' year-end study for 2017 documented that more than 80 percent of SNAP dollars were still spent at supermarkets and superstores with only 5.5 percent of all SNAP dollars spent at convenience stores. This again indicates that when a supermarket or superstore is available it is highly unlikely that a convenience store would have transactions comparable or greater than a supermarket or superstore.

The case record also documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Quick Stop compared to their shopping patterns at other SNAP authorized stores. These three (3) households also had access to, and shopped at supermarkets and/or superstores during the review period. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Quick Stop on the same day or within a few days of shopping at these larger supermarkets and superstores. Under these circumstances, it is highly unlikely that a convenience store with a limited selection of staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space, and the lack of available shopping carts and baskets support the Retailer Operations Division determination. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### CIVIL MONEY PENALTY

The Appellant now requests, in the alternative, that it be assessed a trafficking CMP. However, the Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) within ten (10) days of the receiving the charge letter even though it was informed of the right to do so. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days** ... the firm **shall not be eligible** for such a penalty." [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division's decision not to

impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record in comparison with actual store circumstances was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges support trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Quick Stop, Appellant, is **sustained**.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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. Please note that the judicial filing timeframe is specified in the Act, and this office cannot grant an extension.

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.

RONALD C. GWINN  
Administrative Review Officer

December 13, 2021