

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

**Sanaa Mini Mart Inc.,
Appellant,**

v.

**Retailer Operations Division,
Respondent.**

Case Number: C0196864

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Sanaa Mini Mart Inc., (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated April 1, 2021.

AUTHORITY

7 U.S.C. § 2023 and the 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 January 30, 2017, 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 January 2016 through June 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). 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).

The record reflects that in correspondence dated February 7, 2017, Appellant, through counsel, submitted an FOIA request. The record reflects that the FOIA response was completed on March 23, 2017 and in correspondence dated April 13, 2017, Counsel submitted a FOIA appeal. The appeal was completed on August 31, 2020. By emailed correspondence dated September 21, 2020, counsel responded to the January 30, 2017, charge letter and generally stated after a careful review of the Departments allegations and the transactions listed therein, we have determined that trafficking did not occur at the store. The four (4) categories of “violations” listed by the Charging Letter (identified by the ALERT System) are the statistical results of particular shopping habits of the store’s clientele, mixed with the inventory and staple food items. Appellant, through counsel, provided a number of reports and referenced statistical data within those reports in response to the Charge letter. Appellant, through counsel, stated that in the alternative, in the event the Department determines that trafficking did occur at the Store (which again, the Respondents vehemently deny), Respondents would request that a civil money penalty “CMP” be issue against them in lieu of a permanent disqualification. Appellant also provided 10 signed EBT customer affidavits in support of its response.

After considering Appellant’s reply and the evidence of the case, Retailer Operations Division issued a Determination letter dated April 1, 2021. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated April 12, 2021, Appellant appealed the Retailer Operations Division’s assessment and requested an administrative review of this action. The appeal was granted.

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 an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program 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(c) reads, in part, “*Review of Evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) ...the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as “the buying or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six-month period of January 2016 through June 2016. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made too rapidly to be credible.
2. Multiple transactions were made from individual benefit accounts in usually short time frames.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

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

APPELLANT’S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. The store occupies 600 square feet and sells a variety and quantity of staple food items to the surrounding community such as: Beef, Pork, Chicken, Deli Meats, Eggs, Seafood,

Butter, Cheese, Ice Cream, Milk, Bread, Cereal, Pasta, Rice, and additional food items. All of the above items sell frequently and require replenishment monthly.

2. The Store Visit Report, unintentionally or otherwise, missed that the Store does bulk pricing deals and free “you buy we fry chicken” for customers. These sales drive average transaction amounts up, resulting in more large dollar transactions, and more frequent shopping.
3. Confirmation Bias is present. In this instance, ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the Department’s hypothesis that trafficking is occurring at the Appellants’ Store.
4. Past ARB Cases cited. Any conclusions as to why a household shops the way it does, is based upon guesses and speculation. It is for this reason that FNS’s Administrative Review Branch has struck a lighter tone in overturning these cases.
5. Attachment 1: In these instances, the total balance is rung in by the register, and then the participants portion out which parts they are going to be responsible for. The store does not inquire as to why these transactions take place, but using this approach, the time between transactions does not involve the calculation of groceries, but rather the processing of the second portion of the original transaction.
6. This store has large items or food bundles which do not need to be presented to the clerk for individual calculation. For example, a SNAP participant may approach the counter, identify his/her selection verbally, and the clerk needs only to enter the price. This entire process takes a matter of moments and does not involve moving item by item through the participant’s selections to make a purchase.
7. Attachment 2: All of these transactions are the result of the Store’s business practices, inventory, customer co-shopping, purchasing preferences and the habits of the SNAP clientele.
8. There were shopping carts in the store during the Review Period as well, which would aid in assisting the participants to carry the items to the register in one trip as well.
9. Transportation inconsistency another reason why this store’s transactions appear the way they do: these participants do not have their own vehicles (it is part of the SNAP participant’s application requirements that they have only one vehicle at most), so trips to larger stores are dependent upon rides from friends or family.
10. Attachment 3: Inventory, local competition (or lack thereof), local SNAP participant density and store business practices all impact these transactions.
11. The store’s inventory records line up with its gross food sales revenue, and materially exceeds the total SNAP sales for the Review Period. So, inventory sufficiency is not a question.
12. Attachment 4: Aside from the inventory of convenience foods and regular groceries found at the Store, the households that conducted the transactions contained in the Charge Letter likely have a larger amount of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants.

Appellant, through counsel, provided a copy of the November 2016 USDA report of Foods Typically Purchased By Supplemental Nutrition Assistance Program (SNAP) Households, a copy of the 2017 USDA Profile of SNAP Households for New York, a copy of the 2016 U.S. Grocery Shopping Trends report, a copy of the SNAP, Office of Research and Analysis Final

Report entitled Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, a copy of a cover story in Convenience Store News by Angela Hanson entitled Know Your Core, Protect Your Core, and 49 photographs taken of store stock and signage.

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

ANALYSIS AND FINDINGS

The FNS authorized the business as a convenience store on November 2, 2012. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a February 19, 2016, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with a small counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 600 square feet.
- No shopping baskets or carts available for customers.
- Scanner available but no adding machines available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.
- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
- No food is stored in an area outside of public view.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables.
- Store does not take telephone or online orders and does not offer delivery.
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, automotive products, health and beauty aids, pet foods, and cleaning products.
- Store stocks limited amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry, and fish products. Minimal fresh produce, no fresh meat, or poultry available based on photographs but offered as a cooked item. Most meats are canned, packaged, or frozen.
- A kitchen/prepared food area with hot foods sold for onsite consumption. Sandwiches made upon request. Lunchmeat and cheese sold by the pound.
- A deli or prepared food section. Stock is used in preparation of food.
- No meat or seafood specials or bundles or fruit/vegetable boxes sold

- Only contained one double-sided single isle collection of products.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter – Multiple purchase transactions were made too rapidly to be credible.

This attachment lists 15 sets of transactions totaling \$1,285.66 in SNAP benefits. Each transaction set was completed in less than two minutes. These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. Retailer Operations considered this to be a strong indicator because the second purchase of items would have to be transported to the limited counter area without shopping carts, keyed at the register, a card swiped, a pin entered, and approval indicated, and a receipt printed. Additionally, Appellant's stock and store characteristics do not adequately justify the rapid transactions or the transaction amounts as cited in this Attachment.

Appellant, through counsel, contends that in these instances, the total balance is rung in by the register, and then the participants portion out which parts they are going to be responsible for. The store does not inquire as to why these transactions take place, but using this approach, the time between transactions does not involve the calculation of groceries, but rather the processing of the second portion of the original transaction. Additionally, Appellant contends that this store has large items or food bundles which do not need to be presented to the clerk for individual calculation. For example, a SNAP participant may approach the counter, identify his/her selection verbally, and the clerk needs only to enter the price. This entire process takes a matter of moments and does not involve moving item by item through the participant's selections to make a purchase

With regard to these contentions, Appellant processed 15 sets of transactions, with the second transaction within each set taking place within less than 2 minutes of the previous transaction in the set. In considering the time required to process a legitimate purchase and the numerous steps involved, including the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions were made too rapidly to be credible and are indicative of trafficking.

Each of the transaction sets included different households making the first and second transaction. Because the transaction sets consisted of two different households, counsel's argument that they were the result of a household checking their available balance then purchasing additional items does not adequately explain the unusual transaction activity.

More importantly, the store visit documentation does not evidence that Appellant sold a multitude of items in bulk that would justify the SNAP transactions cited in this Attachment. At

the time of the contracted store visit there was a sparerib special for \$22.99 and an unknown special for \$89.99. It is unclear whether these were related to hot foods or SNAP eligible foods from the store visit. It was also noted that the deli counter was significantly superiorly stocked in the retailer submitted photos. However, while the undated photos provided in the retailer reply may reflect the stock available at the time of the retailer reply – they do not appear to be representative of the stock at the time of the review period. Therefore, while FNS acknowledges these photos, the photos do not provide evidence or explanation for the transactions in the charge letter.

Appellant, through counsel, did not offer, with its review request, any valid explanation or related evidence in an attempt to clarify or justify the specific transactional behavior noted in the Attachment 1 of the charge letter therefore, based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 2 of the Charge Letter - Multiple transactions were made from individual accounts in unusually short timeframes.

There were 99 sets of 219 SNAP transactions involving 69 households that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant, through counsel, contends that all of these transactions are the result of the Store's business practices, inventory, customer co-shopping, purchasing preferences and the habits of the SNAP clientele. There were shopping carts in the store during the Review Period as well, which would aid in assisting the participants to carry the items to the register in one trip as well and transportation inconsistency is another reason why this store's transactions appear the way they do: these participants do not have their own vehicles (it is part of the SNAP participant's application requirements that they have only one vehicle at most), so trips to larger stores are dependent upon rides from friends or family.

With regard to Appellant's contentions, through counsel, if the SNAP recipients shopping habits were a typical pattern, one would expect to see these patterns evident at nearby authorized retailers of the same type. However, the record reflects that the comparison of Appellant's transactions to that of nearby retailers of the same type indicated that these patterns were not evident or not as the same frequency as they were at Appellant's store during the review period which appears to disagree with counsel's assertion that this is normal shopping habits.

Counsel's arguments do not appear to support the transactions in this Attachment. Only one transaction set (out of 99) occurred in less than 28 minutes and 55 seconds. Ninety out of ninety-nine transaction sets occurred more than one hour apart. It is unlikely it would take an hour or hours for Appellant to process a second transaction for a list of pre-calculated items as suggested. Based on the store's stock and infrastructure, the transaction activity in this Attachment does not appear to be the result of pre-calculated purchases for a balance check. It is important to note that the store visit documentation and photographs show that there were no hand baskets or

shopping carts available for customer use even though counsel contends that they were available and utilized during the review period.

In addition, the retailer reply indicated the transactions were explained by forgotten items in a prior transaction, co-shopping, households returning to the store to make a follow up transaction, normal shopping habits and the location of the store. With regard to co-shopping being conducted at Appellant's store, Counsel offered no evidence to support its contention that these were legitimate transactions. Such evidence could include cash register receipts or other documentation to prove that the transactions cited in Attachment 2 were legitimate purchases of eligible food. As such, family members using the same EBT card stated in the reply, while possible, was not supported by the evidence submitted nor by the Appellant's stock or store characteristics. Counsel's citation of SNAP reports does not specifically address Appellant and the shopping pattern exhibited as cited in the charge letter. General data does not provide an adequate reflection of the Appellant store as it is not data taken from the Appellant's transaction history. Moreover, if co-shopping truly impacted the Appellant, concluded by counsel, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns. According the record, this is not the case.

When a household is certified for participation in the SNAP, if there are multiple families living in one household and every member of the household purchases, prepares, and eats food together, the benefits issued are for the entire household. However, if there are multiple individuals living under one roof, and they purchase, store, prepare, and eat separately, their benefits are issued as separate households, each with its own EBT card. Therefore, the different shopping priorities and needs of multiple generations residing under one roof are not necessarily portioned out via one single SNAP benefits account. The attorney's argument of "co-shopping" does not adequately explain the transactions as cited in the charge letter.

Furthermore, the Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report for 2017 states that transactions at supermarkets/superstores accounted for over half of transactions and 82 percent of benefits redeemed. Although the information in these various reports is the result of studies conducted and show valid information to the same, the studies were not conducted on Appellant's store in particular and do not specifically address the transactions cited in the charge letter without tangible evidence to the same.

Attachment 3 of the Charge Letter - The majority or all of an individual recipient benefits were exhausted in unusually short periods of time.

This attachment lists 33 sets of 78 transactions, involving 26 households, totaling \$5,116.39 in SNAP benefits in which individual recipient benefits were exhausted or nearly exhausted. Studies of historical transaction data shows that SNAP recipients do not normally exhaust their benefits in one or two transactions¹ on the same day. A government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a

¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011

household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or in a single day. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP benefit households.

Appellant, through counsel, contends that inventory, local competition (or lack thereof), local SNAP participant density and store business practices all impact these transactions. Also, the store's inventory records line up with its gross food sales revenue, and materially exceeds the total SNAP sales for the Review Period. So, inventory sufficiency is not a question. With regard to these contentions, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores of similar size.

Counsel's conclusion that the retailer had more than adequate inventory to account for the transactions was not supported with inventory purchase records. Based upon the store visit photos, showing a double-sided single isle collection of sundry products, the documented inventory does not appear to support the legion of large and suspect transactions during the review period. Photographs provided by Appellant, after the charge letter was issued, clearly do not match what was present during the contracted store visit and appear to have been created in an attempt to justify the SNAP transactions listed in the charge letter. There are signs indicating that fresh uncooked meat is sold by the pound when this was not present during the store visit. There was one you buy we fry sign as part of the signage on a display case, but photographs provided by Appellant show a hanging sign that was not in the store at the time of the store visit as well as signs posted indicating that large quantities of fresh meat were available for sale in an uncooked state.

As previously stated, at the time of the contracted store visit there was a sparerib special for \$22.99 and an unknown special for \$89.99. It is unclear whether these were related to hot foods or SNAP eligible foods from the store visit. It was also noted that the deli counter was significantly superiorly stocked in the retailer submitted photos. However, while the undated photos provided in the retailer reply may reflect the stock available at the time of the retailer reply – they do not appear to be representative of the stock at the time of the review period. Therefore, while FNS acknowledges these photos, the photos do not provide evidence or explanation for the transactions in the charge letter

Based on the analysis above and in the absence of any compelling evidence to the contrary, the irregular and unusual transaction pattern cited in the charge letter is unlikely and a strong indicator of trafficking in SNAP benefits.

Attachment 4 of the Charge Letter - Excessively large purchase transactions were made from recipient accounts.

There were 796 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low-priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

The record reflects that there are 39 SNAP authorized retailers within a one-mile area of the subject retailer with six (6) combination grocery stores, 20 convenience stores, one (1) large grocery store, four (4) medium grocery stores, five (5) small grocery stores, two (2) supermarkets and one (1) superstore, all within a one-mile radius of Appellant's store. Retailer Operations conducted an analysis of the shopping habits of three of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. However, despite this access to large supermarkets and superstores, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets/superstores in and around the Erie County area of New York. This is another strong trafficking indicator.

Client Affidavits

Counsel submitted 10 SNAP recipient testimonials, dated between February 7th and 14, 2017, and attesting to their staple food purchases at Sanaa Mini Mart, Inc. The testimonials state that the recipients spent large percentages of their SNAP benefits with the subject retailer. An analysis of the provided affidavits indicates that none of the affidavits provided a household or card number that would identify them as recipients of SNAP assistance. The New York State's EBT Terminal provided recipient information for determining ALERT transaction activity during the review period. The analysis showed that the households all shopped at other SNAP authorized retailers during the review period and the percentage of SNAP expenditure as claimed by recipients, in Appellant's store, was much less than listed on the affidavits. No information was found on four of the 10 recipients that submitted affidavits.

The record reflects that FNS acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. It is noted that FNS uses the ALERT system to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking. The legality of this method is identified in 7 CFR § 278.6(a) which states, in part, "FNS may disqualify any authorized retail food store ... if the firm fails to comply with

the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system”.

ALERT is a system utilized by the agency to identify transaction patterns that appear unusual, irregular, and inexplicable for the store type in comparison to other retailers and in reviewing other factors specific to Appellant’s store. Appellant is given an opportunity to adequately explain those transaction patterns through its response to the charge letter and now in its review for Administrative Review. The purpose of this review is not to examine the statistical innerworkings of the ALERT system and whether or not there is a correlation coefficient between any of the ALERT scans and trafficking based on information found in various studies and data provided by Counsel.

Appellant, through counsel, must provide documentation that provides evidence that the SNAP transactions as cited in the charge letter were in fact legitimate SNAP transactions. The statements made by counsel as taken from the various reports supplied during this review, though they may be the result of studies conducted on households receiving and using SNAP benefits in general, these statements do not directly or specifically explain the transactions in Appellant’s store as cited in the charge letter given the specific characteristics of Appellant’s firm and the review period in question. Furthermore, although the information in these various reports is the result of studies conducted and show valid information to the same, the studies were not conducted on Appellant’s store in particular and do not specifically address the transactions cited in the charge letter without tangible evidence to the same. Additionally, the 2016 Grocery Shopping Trends Report states that the methodology used in the quantitative research included a 25-minute survey fielded online to 2,061 U.S. Shoppers age 18 and older, that the sample was split to cover a wider range of topics and does not indicate that the study was for the shopping trends of SNAP recipients specifically

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant’s transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not

demonstrated, the case is to be sustained.

The extensive analysis of Appellant's EBT transaction record, upon which charges of violations are based, provides substantial evidence that questioned transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to EBT customers at a store of this type and size. Rather, the characteristics are indicative of illegal trafficking in program benefits. In addition to the raw data of suspicious transactions, the file also notes that Appellant has no shopping carts or shopping baskets available for customers to carry the many items no doubt necessary for questioned transactions as large as listed.

In addition, Appellant has only one register and one EBT device, very limited counter space, and insufficient stock to explain as legitimate the program redemptions. A review of the record has yielded no indication of error or discrepancy in the reported findings by 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 appears the Retailer Operations has provided substantial evidence of trafficking violations, in the four patterns of EBT transaction characteristics indicated in the letter of charges, and that it is more likely true than not that program violations did, in fact, occur as charged.

Summary

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in four attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of adequate explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other convenience stores in the State.

Generally, stores caught in trafficking violations consistently display particular characteristic transaction patterns including those cited in the charge letter and, in the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by the Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division's adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA, through the administrative review process, whatever evidence, and information it deems pertinent in support

of its position that Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated January 30, 2017, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Sanaa Mini Mart Inc. from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Sanaa Mini Mart Inc. is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

December 1, 2021