

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

**Winnipeg Grocery #1,**

**Appellant,**

**v.**

**Office of Retailer Operations and  
Compliance,**

**Respondent.**

**Case Number: C0247177**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Office of Retailer Operations and Compliance (“ROC”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against Winnipeg Grocery #1 (“Appellant”).

**ISSUE**

The purpose of this review is to determine whether the ROC took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a Permanent Disqualification against Appellant on September 29, 2021.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

In a letter dated July 23, 2021, the ROC charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROC's charges in writing. The record reflects that the ROC received and considered the information provided prior to making a determination. The ROC determined that Appellant's contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROC concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROC issued a determination letter dated September 29, 2021. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROC considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROC determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On October 12, 2021, Appellant appealed the ROC's determination and requested an administrative review of this action. The appeal was granted.

### STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

### CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented 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 in the event that personnel of the firm engaged in trafficking of SNAP benefits.

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(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification . . . . The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . .

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

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

Trafficking is defined in 7 CFR § 271.2, 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 . . . .”

Also at 7 CFR § 271.2, eligible food is defined as:

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

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.

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from January 2021 through June 2021. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- Multiple transactions made from the same accounts in unusually short time frames;
- Transactions that depleted the majority or all of a recipient's monthly SNAP benefits made in unusually short timeframes; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- The charge letter did not identify which section of 7 CFR § 271.2 Appellant violated or which transactions involved the use of pandemic EBT (P-EBT) benefits.
- The ALERT system is biased. Once charged, the likelihood that a store will be permanently disqualified is extremely high. FNS's illegal and discriminatory goal is to permanently disqualify as many minority SNAP retailers as possible.
- The permanent disqualification of Appellant is arbitrary and capricious.
- FNS did not interview SNAP participants.
- FNS's failure to provide the unredacted administrative record violates due process.
- Appellant is approximately 3,087 square feet.
- Appellant sells expensive items including a box of chicken wings for \$199.99, a box of cooking oil for \$99.99, a box of T-bone steak for \$79.99, and a box of catfish for \$69.99.
- There are no medium or large SNAP-authorized retailers located within a mile of Appellant.
- Appellant's sales exceeded \$430,000 during the review period.
- The transaction sets in Attachment 1 are based on arbitrary thresholds.
- Appellant is a small grocery store, not a convenience store.
- Appellant is located near an apartment building with many SNAP participants.
- The SNAP Retailer Training Guide does not suggest that SNAP retailers obtain a POS system that provides itemized receipts.

- There is no direct evidence of trafficking.
- Placing the burden of proof on Appellant to rebut the determination violates the Food and Nutrition Act of 2008 and the U.S. Constitution.
- Basing a violation on an analysis of SNAP transactions violates the U.S. Constitution.
- The charge letter does not define terms such as “unusually large” or “short time frames.”
- Appellant sells a substantial volume of eligible food items.
- Some transactions are included on more than one attachment to the charge letter.
- Most of the back-to-back transactions took place more than an hour apart.
- SNAP transactions were larger due to P-EBT benefits.
- Some SNAP participants without transportation made numerous trips to the store because they could not carry all their groceries in one trip.
- Many transactions occurred early in the month.
- For large transactions when the store was not busy, Appellant separated the items, totaled each half of the items on different registers, and had the SNAP participant purchase each half separately.
- Appellant’s SNAP customers occasionally bought items for friends and relatives.
- Appellant has no control over whether a SNAP participant exhausts their benefits.
- Only a small percentage of the transactions included in the charge letter were over \$100.
- Appellant’s invoices support its level of sales activity.

In support of its contentions, Appellant provided the following documentation:

- A declaration signed by an owner;
- Four pages of tax documents;
- Four pages of back-to-back transactions from another case; and,
- Appellant provided ~271 pages of invoices

These explanations may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

Appellant contends that FNS’s illegal and discriminatory goal is to permanently disqualify as many minority SNAP retailers as possible. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant contends the charge letter did not identify which section of 7 CFR § 271.2 Appellant violated. The charge letter clearly states that the firm is being charged with trafficking as defined in 7 CFR § 271.2.

Appellant contends that placing the burden of proof on Appellant to rebut the determination violates the Food and Nutrition Act of 2008. Nothing in the Food and Nutrition Act of 2008 prohibits—once the Office of Retailer Operations and Compliance establishes trafficking occurred—Appellant from bearing the burden of providing relevant evidence during an

administrative review to support a conclusion, considering the record as a whole, that that it did not engage in trafficking. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

### **Constitutionality**

Appellant contends that placing the burden of proof on Appellant to rebut the determination and basing a violation on an analysis of SNAP transactions violates the United States Constitution. In reference to these contentions, no findings or conclusions are rendered. The administrative review process does not include an assessment of the constitutionality of the laws, regulations and policies under which the agency imposed adverse actions, but rather whether the agency actions undertaken were proper pursuant to those laws, regulations and policies and sustainable by a preponderance of evidence. As such, this office does not have the authority to assess whether the United States Congress, in its enactment of legislation, has conformed to Constitutional mandates.

### **Store Characteristics**

In reaching a disqualification determination, the ROC considered information obtained during a March 10, 2021 store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 3,078 square feet with 220 square feet of food storage outside of public view;
- Available inventory of SNAP-eligible food items showed stock composed predominantly of inexpensive items, which is typical of a convenience store;
- Two cash registers and one electronic SNAP terminal device;
- No shopping carts and eight hand baskets;
- No scanners or conveyor belts;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

Appellant contends it is a small grocery store not a convenience store. Although its stock is above average for a convenience store, the evidence does not support that Appellant is a small grocery store. There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. The available food was primarily of a low-dollar value and there was no hint that the firm sold items in bulk. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

## **Repeat Transactions by the Same Household**

Attachment 1 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Appellant argues “short time frames” is not defined, that the thresholds used to identify back-to-back transactions are arbitrary, and only a small percentage of the transactions included in the charge letter occurred in back-to-back transactions of less than an hour. While transactions happening within minutes are more suspicious, violating stores may conduct multiple transactions from the same household account within a 48-hour period to avoid the detection of single, high-dollar trafficking transactions. There are 154 repeat transactions totaling \$9,561.31 included in this document.

Appellant contends it is located near an apartment building with many SNAP participants and some SNAP participants without transportation made numerous trips to the store because they could not carry all their groceries in one trip. While Appellant may be located near SNAP participants, the record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

Appellant contends there are no medium or large SNAP-authorized retailers located within a mile of Appellant. The Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant, including a medium grocery store located .06 miles from Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

The following examples from the ROC’s Case Analysis Document show households shopped at better stocked firms on or about the same day as conducting large transactions at Appellant:

### **SNAP Household #1**

This SNAP household is located 1.7 miles from Appellant. One day, this household made a transaction at Appellant for \$198.09 followed by a transaction at a supermarket 25 minutes later for \$32.24. Later that day, this household made two more transactions at supermarkets for \$121.52 and \$11.48. The next day, this household returned to Appellant and made another transaction for \$185.19, followed by three more transactions at a supermarket later that day. Another day, this household made a transaction at supermarket for \$121.31, followed by a transaction at Appellant for \$135.10. Two hours later, this household made another transaction at a supermarket for \$68.64.

### **SNAP Household #2**

This SNAP household is located .8 miles from Appellant. One day, this household had a transaction at Appellant for \$80.25. The following day, this household had a transaction at a supermarket for \$179.90 followed by a transaction at Appellant three hours later for \$68.17.

### **SNAP Household #3**

This SNAP household is located .6 miles from Appellant. For nearly three months of the review period, this household made multiple larger transactions at a large grocery store and a superstore as well as multiple transactions at Appellant for amounts ranging between \$1.50 and \$19.19. Then, one day, this household had a transaction at large grocery store for \$29.45 followed by a transaction at Appellant later that day for \$80.25. Each month thereafter, this household expended all its benefits at Appellant in one or two large transactions (e.g., \$169.30, \$170.90, \$123.93).

Appellant contends the back-to-back transactions are due to customers sharing benefits with others. Appellant has offered no evidence whatsoever that SNAP households share their cards with other household members, relatives, or friends. Appellant has also not provided any explanation for why, if such behavior was occurring, these purchases would occur at Appellant rather than at nearby, larger stores. It is unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately. An unsubstantiated argument such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant is correct that a number of households whose transactions were cited in this attachment are also included on other attachments to the charge letter. Transactions appearing in more than one attachment to the charge letter are more suspicious as they display multiple patterns common to trafficking transactions.

While there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store. Spending sizable portions of one's SNAP benefit allotment in a convenience store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions are occurring in a 48-hour period in a convenience store should be both rational and compelling. Appellant's explanation is neither.

### **SNAP Benefit Depletions**

Attachment 2 to the charge letter documents the same household exhausting all or nearly all its benefits in rapid order. There are 45 transactions totaling \$3,505.53 included in this document.

In some cases, SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week of the month. It is highly implausible that



customers would desire, or be able, to regularly conduct large transactions that deplete balances to within pennies of a zero balance. The likelihood that these transactions were the result of the legitimate sale of only eligible foods only is extremely small.

Appellant contends many transactions cited in the charge letter occurred early in the month. A government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket.

It is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a convenience store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore. 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 a single day. Depleting a large portion of one's SNAP balance early in the benefit month, leaving little to purchase food for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

### **Large Transactions**

The food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. It is rare for a convenience store such as Appellant's to have purchases like those included in Attachment 3 to the charge letter. Appellant contends the charge letter does not define "unusually large," however this attachment cites 246 EBT transactions during the six-month period of investigation of \$50.26 or more totaling \$19,649.73. Of these transactions, 42 totaled \$100 or more and 11 totaled \$150 or more. There were also unusual patterns in these transactions; while there were only four transactions between \$77 and \$78.99, and three between \$81 and \$82.99, there were 21 between \$79 and \$80.99, including 6 for exactly \$79.99.

Additionally, many of the charge letter transactions arrive at, or cluster around, certain dollar amounts in \$5 increments (e.g., \$80, \$100). Households typically shop to obtain a certain mix of food items, irrespective of the total cost (other than to remain within allotment balances), and do not strive to achieve a particular total. The purchase amount of eligible food items typically approximates a random total. In contrast, firms facilitating trafficking tend to concentrate transactions at particular dollar amounts. In the absence of any compelling rationale to the

---

<sup>1</sup>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.

contrary, the pattern of clustering transactions around certain dollar levels is implausible and indicative of transaction structuring and SNAP-benefit trafficking.

These transactions exceed the county's average SNAP transaction, which was \$10.67 for this type of store during the six months of the review period. The Case Analysis Document shows the average transaction at Appellant during the same period totaled \$12.09. Appellant's average transaction is significantly higher than the county's average transaction. As previously stated, Appellant has a limited food stock typical of a convenience store and does not have any features that would induce people to spend substantially more than the typical convenience store purchase amount.

Appellant contends the charge letter did not identify which transactions involved the use of P-EBT benefits and SNAP transactions were larger due to P-EBT benefits. During the review period, redemption of SNAP and P-EBT benefits occurred at SNAP-authorized retailers; Appellant provided no explanation why its transactions would differ from other retailers due to the presence of P-EBT benefits. The Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to three SNAP-authorized convenience stores located nearby. Appellant had more large transactions than all of the nearby comparable stores.

Appellant insisted that for large transactions when the store was not busy Appellant separated the items, totaled each half of the items on different registers, and had the SNAP participant purchase each half separately. Appellant provided no evidence to support that it engaged in this highly unusual practice. Appellant also did not explained why, if it did engage in this practice, it would not total the two amounts to avoid the SNAP participant and cashier from having to expend the effort necessary to conduct two separate SNAP transactions. An unsubstantiated assertion such as this does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

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

### **No Control Over Benefit Use**

Appellant is correct that it has no control over how and when SNAP customers spend their benefits. SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use. Rather, they display characteristics not typically found at convenience stores and are indicative of trafficking.

### **Expensive Offerings**

Appellant asserts it sells expensive items which explain the large purchases. The evidence does not support this contention.

Appellant states it sells boxes of meat, boxes of oil, and cases of drinks. During the March 10, 2021 store visit, none of these items were on display as being available for bulk sale. In addition, there were no posted prices for these items. The store clerk identified the six most expensive items at Appellant, which were then recorded and photographed by the store reviewer. None of these items Appellant now alleges it sells were identified by the store clerk except frozen pizza—which was priced at \$7.99 at the time of the store visit and is now priced at \$11.99 according to Appellant. The store review report also documented that the firm did not have meat or seafood specials or bundles.

While there may have been occasions when Appellant sold expensive items based on evidence from the store visit, and lack of corroborating receipts, it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

### **Appellant's Responsibilities**

Appellant does not have receipts and insists that SNAP Retailer Training Guide does not suggest that SNAP retailers obtain a POS system that provides itemized receipts. While the SNAP Retailer Training Guide does not endorse particular POS systems, the document recommends retaining “all register receipts for at least one year for program eligibility and integrity purposes.”

### **Invoices**

Appellant contends it sells a substantial volume of eligible food items and submitted approximately 271 pages of invoices to establish that the store purchased enough inventory to support the total of its SNAP sales. However, the invoices are insufficient to demonstrate this. Many of the invoices provided did not include Appellant's name or the supplier's name, were outside of the review period, did not include a list of items purchased or included items that are not eligible for purchase with SNAP benefits. The SNAP-eligible inventory included in the invoices from the review period totaled approximately \$49,363. Using the average mark up amount provided by Appellant of 42.5%, this amount of inventory would support \$70,343 in

SNAP transaction activity. However, the total of SNAP transactions during the review period was much higher than this amount. This also does not account for any non-SNAP purchases of food items at Appellant.<sup>2</sup> In sum, the invoices do not explain the questionable transactions at Appellant.

### **Evidence of Trafficking**

Appellant argues there is no direct evidence of trafficking and that FNS should have interviewed SNAP participants. Appellant also insists that the ALERT system is biased and that once charged, the likelihood that a store will be permanently disqualified is extremely high.

As previously stated, 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.)

FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. This tool does not determine that trafficking has occurred. The ROC must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROC conclude whether questionable transactions were, more likely than not, the result of trafficking. Transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the suspicious patterns displayed and the other supporting evidence in the file - and in the absence of any reasonable explanations for such transaction patterns - the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

### **No Denial of Due Process**

Appellant contends that it has been denied due process because it did not receive the unredacted administrative record. In this regard, the permanent disqualification of Appellant by the ROC is neither a criminal nor a civil action, but rather an administrative action imposed against the firm as a result of trafficking violations. Appellant admits that much of this information would be protected from disclosure even if requested through FOIA. Appellant was provided with the

---

<sup>2</sup> Appellant maintains its sales exceeded \$430,000 during the review period. However, according to Appellant’s gross receipts as reported to the Minnesota Department of Revenue, Appellant’s sales totals were \$199,930.

charge letter which included the suspicious transactions on which the charge was based as well as the store visit documentation.

### **Summary**

The ROC determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROC's assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROC considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability and characteristics of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Appellant contends the permanent disqualification of Appellant is arbitrary and capricious. Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROC's determination that Appellant most likely trafficked in SNAP benefits. 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 must disqualify the firm permanently.

### **CIVIL MONEY PENALTY**

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of July 23, 2021. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROC. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The

determination by the Office of Retailer Operations and Compliance to deny Appellant a civil money penalty is sustained.

### **CONCLUSION**

The record has yielded no indication of error in the finding by the Office of Retailer Operations and Compliance that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Office of Retailer Operations and Compliance to impose a permanent disqualification against Winnipeg Grocery #1 from participating as an authorized retailer in SNAP is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

January 11, 2022