

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

1 & Up Only Store,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217777

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against 1 & Up Only Store (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on June 3, 2019.

AUTHORITY

According to 7 U.S.C. § 2023 and the 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

By letter dated May 21, 2019, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in November 2018 through January 2019. 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 ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in a phone call to the Retailer Operations Division on May 23, 2019, and by a letter dated May 24, 2019, submitted via fax. Neither the phone call nor the letter requested a CMP nor did they contain any documentation in support of one. The Retailer Operations Division notified Appellant by letter dated June 3, 2019, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated June 7, 2019, Appellant appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. Subsequent correspondence was received.

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 Part 278.6(a) and Part 278.6(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 have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states: "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."

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." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: "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)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

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. The charges on review were based on an analysis of SNAP EBT transaction data during the three month period of November 2018 through January 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The owner understands he has made some SNAP program violations, but none were trafficking. The firm offers bulk discounts and some residents purchase most of their groceries here explaining the high charge amounts. Some purchase costs may have come under review because of the discounts for bulk purchases. Customers benefit from the savings from the bulk purchases and may purchase more here during one visit instead of being split among more visits;
- Family members may share the same EBT card adding to the frequency of trips. One member may come in and soon after the spouse comes in to purchase more. The firm cannot tell if it is the same EBT card, they cannot see the name, and they do not have an ID system to verify how these purchases work;
- There may also be some errors in the claim as it shows charges made outside of business hours. At the latest, there may be a transaction a few minutes after 8 PM. The firm is open 8 AM-8 PM and number 54 shows a transaction made at 10:43 PM. Many other transactions may also be in error as any transactions later than 8:30 would not be possible;
- The firm is also operating at a loss and the owner cannot afford to hire any highly skilled workers making it difficult for workers to fully understand the SNAP program. The firm uses a simple manual system;

- The owner has the full intention of following SNAP program rules and will be happy to implement any methods that may help him follow the guidelines. If he can't participate in SNAP, he will not be able to serve the community with the goods it needs; and,
- Appellant contends the owner has discussed his SNAP issues with customers and three have volunteered to attest to how much SNAP means to them and how it is used at the store.

Appellant submitted three customer statements in support of these contentions.

ANALYSIS AND FINDINGS

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS initially authorized the firm on July 11, 2016. The case file indicates that the firm received a six month SNAP disqualification for accepting SNAP benefits in exchange for ineligible nonfood items in 2017. The record also shows indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 8, 2019, store visit 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 firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a convenience store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The store stocked traditional American brands as well as a limited variety of canned and packaged Hispanic foods. There were no other ethnic or specialty food items.
- The store visit report and photos showed one shopping carts and two hand baskets for customer use thus limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase with the exception of beverages.

- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles, seafood specials, or fruit/vegetable boxes for sale.
- The sole checkout area was on the top of a glass display case with an area approximately 2.0 feet wide and 1.5 feet deep with displays on both sides leaving a very limited area for customers to place their purchases. The very small checkout area would make it problematic to process large orders. The checkout area had one cash register, one POS terminal, and no optical scanner as confirmed by the store cashier.
- The firm had a very limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- The firm had no fresh unprocessed meat or seafood, no frozen unprocessed meat or seafood, an extremely limited stock of processed meat and seafood (canned items only), no packaged lunch meats, no deli meats, no sausages, no bacon, no hot dogs, no frozen entrees, no frozen dinners, several cartons of eggs, no fresh or frozen fruit and vegetables, no dried fruits, an extremely limited stock of dried vegetables, 100 percent fruit juices, 100 percent vegetable juices, a very limited selection of packaged single serving nuts, an extremely limited stock of canned soups, a very limited selection of canned or packaged staple food items, no deli cheese, no packaged cheese, no yogurt, no single serving yogurt, no sour cream, no butter, no margarine, canned milk, single serving milk drinks, fresh milk, coconut milk, no almond milk, no soy milk, no cottage cheese, bread, rolls, no pitas, no tortillas, tostadas, no corn meal, flour, sugar, rice, hot cereal, cold cereal, no single serving cold cereal, many single serving Ramen noodle soups, no canned pasta, no single serving pasta, dry pasta, dry noodles, pancake mixes, baking mixes, mac&cheese, cooking oil, no coffee, tea, no cocoa, no baby foods, no infant formula, and no expensive staple food items.
- Ineligible items included: tobacco, smoking accessories, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, party supplies, charcoal, lighter fluid, grills, toys, greeting cards, party supplies, incense, eyeglasses, and electronics accessories while accessory foods included: candy, condiments, snacks, baked goods, cooking oil, sugar, single serving ice cream, spices, cake mixes, tea, and un/carbonated drinks.
- The firm's hours of operation, as confirmed by the store cashier, were 8 AM-8 PM daily. The employee also stated that the firm did not take phone orders, did not take online orders, did not deliver groceries, and did not round transaction totals up/down.
- Signage was in English and while there was a SNAP sign "Do's and Don'ts for Cashiers" posted at the checkout, it was facing the customers, not the cashier. No other SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) were visible in the store. Most food items were not individually priced and comments on the FNS store visit report, completed in conjunction with the store cashier, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being a 12 pack of Perrier bottled water priced at \$30.99, a 12 pack of Smart Water priced at \$24.99, and a 24 can case of soda priced at \$19.99. There was no fourth food item priced over \$5.00 and the firm only stocked one case of

Perrier and six cases of Smart Water. This listing of the most expensive items was provided by the store cashier during the store visit.

- The firm was not a WIC vendor.
- The store visit report and photos noted empty or minimally stocked shelves as well as very dusty canned and packaged goods indicative of a slow turnover of stock.
- The quantity and variety of the store's staple food inventory was less than that seen during the previous FNS store visit on April 9, 2018. The firm was also noted to be deficient in the dairy staple foods category stocking only milk and coconut milk.

Multiple transactions in unusually short time frames

This Attachment documents 30 individual transactions in 12 sets of two or more transactions conducted by eight different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in six of the 12 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Three sets are comprised of four individual transactions while the remaining nine sets are comprised of two individual transactions. Ten of the 30 individual transactions in five of the 12 sets occurred after the firm's reported 8:00 PM closing time with the latest occurring at 10:51 PM. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends that family members may share the same EBT card adding to the frequency of trips. One member may come in and soon after the spouse comes in to purchase more. The firm cannot tell if it is the same EBT card, they cannot see the name, and they do not have an ID system to verify how these purchases work. There may also be some errors in the claim as it shows charges made outside of business hours. At the latest, there may be a transaction a few minutes after 8 PM. Many other transactions may also be in error as any transactions later than 8:30 would not be possible. Appellant submitted three customer statements in support of these contentions.

It is an indication of potential trafficking when there are numerous transactions occurring outside of the store's reported business hours. That one-third of the transactions in five of the 12 transaction sets in this Attachment occurred well after the firm's operating hours is certainly indicative of trafficking and is not due to an error in the claim. The times reflected in this Attachment are the times that the transactions were transmitted to and approved by the state's SNAP EBT processing system and would not be affected by any issues at the Appellant firm. FNS records show that after hours transactions were occurring at the Appellant firm prior to, during, and after the review period.

The FNS store visit report and photos show the firm offers a very limited quantity and variety of staple foods. Specifically, the firm does not offer any fresh unprocessed meat or seafood, has no frozen unprocessed meat or seafood, has an extremely limited stock of processed meat and seafood (canned goods only), has no fresh or frozen fruits or vegetables, and is deficient in its selection of dairy products. There are multiple better stocked stores nearby as well as a supermarket and a medium grocery store located approximately 10-11 blocks from Appellant's location and a small grocery store only two blocks away. The firm's very limited staple food stock combined with the availability of better stocked stores nearby makes it unlikely that any SNAP recipient would consider the firm as their primary source for groceries.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment 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 a convenience store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, of household members/friends shopping together and making separate purchases, or of households making a separate purchase to check their balance followed by another transaction as all, but two of the 12 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with nine of the 12 sets having subsequent transactions of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two. Appellant also offers no explanation as to why households would conduct up to four sizeable transactions at the Appellant firm within a short period of time.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average convenience store SNAP transaction amount in Los Angeles County during the review period was \$7.16. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Retailer Operation Division's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of comparably sized or larger food stores located nearby and at a distance from Appellant's location, including super stores and supermarkets. Their analysis also showed numerous households that shopped at the Appellant firm and a super store and/or supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) inexplicably spent as much or more at Appellant's convenience store than they did at the super stores and/or supermarkets. Appellant fails to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases

often totaling to comparable or higher dollar amounts at a very minimally stocked convenience store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at supermarkets and super stores. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore the more plausible explanation is that these households were trafficking SNAP benefits at the Appellant firm.

For example, the household that provided Appellant's third statement conducted three transactions at the Appellant firm 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Early the next morning this household spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a supermarket located 0.68 miles away from Appellant's location and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a superstore located 1.6 miles away indicating that transportation is not a problem. State SNAP database records show this household's reported residence is 0.6 miles away from Appellant's location and is only two blocks away from a better stocked small grocery store. The residence is also equidistant from the supermarket and the Appellant firm. During the review period, this household conducted only four other transactions at the Appellant firm with all four taking place in January 2019 and with three of the four transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) indicating that the household was not regularly shopping at the Appellant firm. During the review period, this household conducted 16 transactions at nine other stores located up to 8.28 miles from Appellant's location that included three super stores, two supermarkets, and a meat specialty store. There is no legitimate reason why this household would spend so much of its SNAP allotment at a poorly stocked convenience store when it clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

It is not credible that a convenience store with a very limited selection of inexpensive staple foods would have suspicious SNAP transactions much greater than a supermarket and a superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a set time period.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 102 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a limited stock of staple foods and calls into question the legitimacy of these transactions. There

are 29 transactions occurring after the firm's reported business hours. The transactions are also substantially higher than the average SNAP transaction amount of \$7.16 for this store type in Los Angeles County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar value transactions remain questionable when considering the proximity of the other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is very limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 30 comparably sized or larger SNAP retailers located within a one mile radius of the Appellant firm that includes one supermarket, three medium grocery stores, and three small grocery stores as well as meat and seafood specialty stores. The supermarket and the closest medium grocery store are located approximately 10-11 blocks away from Appellant's location as well as a small grocery store only two blocks away. These stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a very minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood and no fresh or frozen produce.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Los Angeles County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction amount is 56.28 percent larger than that of Los Angeles County convenience stores while its average SNAP transaction dollar volume is 79.34 percent larger and its total SNAP transaction count is 14.64 percent larger than the County average. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in Los Angeles County. A comparison of Appellant's redemption data to the average for County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume significantly exceeds that of like type stores 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at which point transactions stop. It is unusual that Los Angeles County convenience stores begin averaging less than one transaction in each range 5 U.S.C. § 552 (b)(6) & (b)(7)(C), one-third that of the Appellant firm. The Appellant firm also has unusual spikes in the number and dollar volume of

transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) over the same period; these transaction amounts are not supported by store inventory. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction pattern and the unusual spikes in both transaction number and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the very limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the firm offers bulk discounts and some residents purchase most of their groceries here explaining the high charge amounts. Some purchase costs may have come under review because of the discounts for bulk purchases. Customers benefit from the savings from the bulk purchases and may purchase more here during one visit instead of being split among more visits.

Neither the store visit report itself or the many photos of the store's layout and inventory taken during the visit provide any evidence to support Appellant's claim that the firm offers bulk discounts. Information obtained during the FNS store visit on May 8, 2019, shows that the Appellant firm offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, drinks, and various single serving foods as well as many ineligible items. The fact that tobacco, smoking accessories, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, party supplies, charcoal, lighter fluid, grills, toys, greeting cards, party supplies, incense, eyeglasses, and electronics accessories are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP

eligible store stock via receipts of products taken into inventory for the relevant months. The firm also has a very small checkout area and only one shopping cart making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a very limited stock of staple food items also makes it improbable that the food items purchased in the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

The three customer statements provided by Appellant were analyzed by the Retailer Operations Division using the California SNAP database. It is noted that the first and third statements did not list the correct EBT card serial number while the first statement also listed an incorrect address. The first statement claims the recipient has lived on Avalon Boulevard at an address that is only one block from the Appellant firm for three years, but California SNAP records show this recipient's self-reported residence as actually being 5 U.S.C. § 552 (b)(6) & (b)(7)(C) approximately 0.6 miles from Appellant's location. The SNAP database shows all three customers reside 0.4-0.6 miles away from Appellant's location and all are closer to larger stores, such as small or medium grocery stores, than they are to the Appellant firm. A review of the shopping patterns for these customers shows they conducted only seven, four, and three transactions at the Appellant firm over the review period with only the first statement having a transaction set listed in the first Attachment and with only the second statement having made purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm. Additionally, all three statements talk about the good deals, good prices, and two for one savings at the firm, but none cite any specific examples. The third statement also claims that the recipient is a single parent with no transportation and that the Appellant firm is the only grocery store nearby when in fact this recipient's reported address is equidistant between the supermarket and Appellant's location and it would have to pass by a small grocery store as well as a meat specialty store to get to the Appellant firm. Lastly, none of the three statements offer explanations for the multiple transactions or the high dollar value transactions listed in the charge letter. Accordingly, the three statements have no evidentiary value.

It is further noted that SNAP redemptions at the firm fluctuated unusually following the store visit on May 8, 2019, and receipt of the charge letter on May 22, 2019. The volume of SNAP redemptions at the Appellant firm increased 13.7 percent from April 2019 to May 2019 while the average SNAP transaction dollar amount increased 18.12 percent during this same period. A pronounced fluctuation in SNAP redemptions following these events is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Other Contentions

Regarding the owner's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that

the administrative action should be reversed. That means the 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. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When the store owner signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP.

The store owner provided no evidence (e.g. tax or accounting documents) to support its allegation that the firm is operating at a loss and cannot afford to hire any highly skilled workers who can understand the SNAP program. FNS also provides each SNAP authorized retail food store with a training package that includes a video and a retailer training guide to explain SNAP rules. In addition, FNS provides retailers with posters and employee guides to facilitate both employee and customer compliance with SNAP rules. While the owner states he has the full intention of following SNAP program rules and will be happy to implement any methods that may help him follow the guidelines, he has already had the necessary materials to accomplish this and failed to use them to implement an effective training program.

The owner and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly state that "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, 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". In the present

case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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 charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective

compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant did not request a CMP and did not present training documentation of any kind in support of one.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not request or provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. 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 charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

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 a judicial review is desired, 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

September 10, 2019