

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

128 P & L Deli Grocery Corp,

Appellant,

v.

Case Number: C0200724

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of 128 P & L Deli Grocery Corp. (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against 128 P & L Deli Grocery Corp.

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from January 2017 through June 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.

- The majority or all of an individual recipient's SNAP benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized 128 P & L Deli Grocery Corp. for SNAP participation as a small grocery store on December 27, 2013. In a letter dated August 3, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of January 2017 and June 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated August 15, 2017, the Appellant responded to the charge letter, disputing that trafficking had occurred and offering brief anecdotal explanations regarding each of the charge letter attachments. According to the Appellant, the main reason for the unusual transactions was the firm's practice of offering in-store credit to some of its customers. In this activity, the firm would permit households to obtain food items on credit and then pay off their debt with SNAP benefits once the household's benefit allotment had been replenished.

The Appellant also indicated that it holds monthly discussions with all of its employees in which SNAP rules and regulations are reviewed. The Appellant also stated that the store would not likely survive a disqualification and requested that if a permanent disqualification were necessary that a civil money penalty be imposed instead.

Along with its written explanation, the Appellant submitted 166 pages of inventory records, photographs, letters from customers, and copies of credit account ledgers.

In response to the Appellant's claim that it allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter dated August 17, 2017. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts.

It should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

In response to the August 17, 2017, letter, the Appellant submitted approximately 60 additional pages of credit ledger information and letters from customers. The Appellant also stated that the firm has always been a "rule abiding business" and that it was never the owner's intention to circumvent the rules, but simply to help people who were in need.

After considering the Appellant's responses and documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated September 26, 2017. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked October 10, 2017, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, **inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system...** [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) 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) states, 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(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program...

APPELLANT'S CONTENTIONS

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

- The firm offers a large variety of grocery items and sandwiches.
- None of the transactions listed in the charge letter were due to trafficking. The transactions may seem irregular due to the large volume of business the stores does, but the firm also offers a few of its clients in-store credit.
- The SNAP benefits that families receive are often not sufficient to cover the whole month. The firm offers some of these families a service that allows them to purchase food even though their benefits have been depleted. Once those benefits are replenished, they pay for the food that has been purchased on credit. This results in irregular amounts and the unusually large transactions described in the report.
- Not everyone is given credit, but those who are have come to depend on the store. The owner of the store did what he felt was right.
- The owner has created a good rapport with the people of the neighborhood, and in doing so, many clients have written letters confirming that they receive in-store credit and requesting that the store not be disqualified from SNAP participation.
- The firm also previously sent inventory purchase receipts to show its extensive inventory.
- The Appellant is now aware that accepting EBT benefits as payment for in-store credit is against the rules and regulations of SNAP, and the firm has discontinued this practice.
- Most importantly, the Appellant has been a rule abiding business and has always observed the rules and regulations of SNAP, and under no circumstances would it knowingly commit any violations.
- Appellant requests an opportunity to stay in the program and continue to provide services to the community.
- Should the decision to permanently disqualify the firm from SNAP be upheld, Appellant requests that a CMP be imposed instead.

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

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a May 18, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- 128 P & L Deli Grocery Corp. is a small grocery store, approximately 1,000 square feet in size, operating in New York City.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets, which is not uncommon for stores of this size. Customers shopping in such stores generally do not purchase more food than they can carry in their arms.
- The store visit photographs show one cash register and agency records reflect the use of one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is sufficient in each of the four staple food categories and appears to be typical of a small grocery store or neighborhood deli.
- The report also indicates that the store sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, alcoholic beverages, and miscellaneous household merchandise.
- The store sells hot and cold prepared foods, particularly hot and cold made-to-order sandwiches. It should be noted that hot foods are not eligible for purchase with SNAP benefits.
- The firm also sells deli meat and cheese by the pound. It also appears that these same meat and cheese items are used in the preparation of made-to-order sandwiches.
- At the time of the contractor's visit, the firm was an authorized retail store in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). This is reflected in the WIC food items available for purchase, including fresh produce, fruit juice, eggs, bread, milk, breakfast cereal, infant fruits and vegetables, infant cereals, and infant formula.
- The checkout area consists of a small countertop, perhaps 18 inches by 24 inches in size. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few small items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end in 9, such as \$2.79, \$3.99, etc. The most expensive items in the store include 12.5 ounces of infant formula (\$18.04), 20-pound bags of rice (\$11.99), 2.5-gallon containers of cooking oil (\$24.99), and 4.85-pound cans of Nido powdered milk (\$32.99). The store visit contractor also reported that the firm does not round transaction totals up or down at checkout.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small grocery store, where households normally purchase a limited number of items. There was no indication that SNAP households would be inclined to regularly visit 128 P & L Deli Grocery Corp. to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets and the extremely constricted checkout area.

Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 967 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such transactions are not supported by a specific pricing structure at the store, they are a strong indicator of trafficking in SNAP benefits.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 26 sets of transactions (59 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small grocery store with no shopping carts or baskets.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

These sorts of transactions are incredibly unusual for small grocery stores that have no shopping carts or baskets and that sell primarily low-priced merchandise. Such transactions are strongly suggestive of trafficking.

Charge Letter Attachment 3: In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists 25 sets of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its monthly allotment at one store in a very narrow window of time. A suspicion of trafficking is reinforced when these balance-depleting purchases occur in small stores such as 128 P & L Deli Grocery Corp., where there is limited inventory and a lack of shopping carts or baskets to help facilitate large purchases. It makes little sense that a household would spend almost the entirety of its monthly SNAP allotment in a single transaction or in a series of rapid transactions at this store.

It should be noted that there are more than 175 comparable or larger stores located within a one-mile radius of the Appellant firm, including 16 supermarkets and 10 superstores, which makes the rapid depletion of one's SNAP allotment at this small store even more implausible.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. This attachment lists 277 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a small grocery store in the state of New York. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for small grocery stores in New York was \$11.18. In New York City, the average was even lower, at \$10.31.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods, including a limited number of expensive food items, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there are almost certainly some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 4. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the lack of shopping carts and baskets, the severely constricted checkout area, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C), it is very unlikely that the Appellant firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts or baskets, especially since the evidence shows that the firm's customers regularly shop at larger, better stocked stores in the area, where shopping carts help facilitate the purchase of large numbers of items.

The transactions identified in the charge letter are highly unusual and substantially different from comparable stores in the area. As noted earlier, in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant in this case has not offered relevant evidence, such as itemized cash register receipts, to verify that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Based on the above analysis, it is the determination of this review that 128 P & L Deli Grocery Corp. likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Credit Accounts

The chief contention offered by the Appellant as an explanation for the unusual transaction patterns listed in the charge letter is a claim that the firm has a practice of allowing SNAP customers to shop on credit and then pay the store back when the household's benefit allotment

is replenished. In support of this argument, the Appellant submitted 27 mostly handwritten statements from apparent SNAP recipients along with several dozen itemized credit ledgers. In their written statements, the customers confirm that the store allows them to shop on credit and requests that FNS not impose a permanent disqualification against the firm. The credit ledgers provided by the Appellant list the name of the customer, the date of the credit transaction, identifies what was purchased, shows the amount of the credit given, and specifies the date and amount that the credit account was paid with the customer's EBT card. The payment amounts also correspond to transaction amounts listed in the charge letter, particularly in Attachment 4.

Based on this evidence and for the sake of argument, this review will concede that the Appellant firm was almost certainly engaged in the practice of allowing SNAP customers to shop for food items on credit. For the most part, the evidence appears credible and this review has little reason to suspect that the documentation was fabricated in any way. This evidence, by itself, is sufficient to impose a one-year disqualification against the firm. The question, however, is whether or not the Appellant firm was engaged in trafficking as well.

Unfortunately, the Appellant's evidence is not adequate enough for this review to conclude that trafficking was not occurring. As noted earlier, in order for a reversal of the Retailer Operations Division's determination to be warranted, the onus is on the Appellant to prove, by a preponderance of the evidence, that trafficking was not taking place.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This leaves hundreds of transactions unaccounted for, with no valid explanation or documentation to justify why such transactions might have occurred. So while it is very likely that the firm was committing credit account violations, the preponderance of the evidence regarding allegations of trafficking weighs heavily in favor of the Retailer Operations Division. The transactions listed in the charge letter attachments are of such an unusual nature that this review has little option but to conclude that many of the transactions were the result of trafficking. Thus, the determination of permanent disqualification is appropriate.

Other Documentation

As to the other documentation provided by the Appellant, including inventory purchase receipts and photographs of the store, such evidence is not sufficient to prove that trafficking was not occurring. In fact, based on the inventory documentation provided by the Appellant, it appears that the firm does not have enough inventory to cover its SNAP transactions. For the six-month review period, the Appellant submitted inventory receipts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (eligible food items only). Assuming a 40 percent markup on that merchandise, the total inventory would add up to just 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, SNAP redemptions for the same period exceeded 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is possible that the Appellant failed to submit all inventory records for the review period. As such, the numbers above may not be entirely accurate. But the evidence provided by the Appellant is inadequate for this review to conclude that trafficking was not occurring.

Remedial Actions Taken

The Appellant contends that it was not previously aware that credit account violations were prohibited, but now that it is mindful of this, the practice has been discontinued.

With regard to this contention, it is important to reiterate that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the circumstances that existed at the time the violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations.

Therefore, the Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide a valid basis for dismissing the charges or for modifying the penalty imposed.

No Prior Violations

The Appellant contends that the firm has always been a rule-abiding business and has always observed the rules and regulations of SNAP, and under no circumstances would the Appellant violate them. This contention implies that because the firm has been compliant with SNAP rules and regulations in the past, the charges should be dismissed or reduced.

Unfortunately, this contention does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed. The law requires that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B). Additionally, the Appellant's admission of credit accounts clearly shows that the firm has not always observed the rules and regulations of SNAP as it contends. The record shows that on December 12, 2013, the Appellant owner signed an application to participate as a retailer in SNAP. By signing this application, the Appellant owner agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the Appellant owner agreed to abide by all program rules, including not "accepting SNAP benefits as payment on credit accounts or loans."

From all indications, the Appellant ignored the rules that were disclosed by FNS from the earliest stages of SNAP participation.

Hardship to Appellant

In its initial response to the charge letter, the Appellant contended that a disqualification would likely force the firm to go out of business.

With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative sanction does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

The Appellant has stated that if the decision to permanently disqualify the firm from SNAP is upheld, it would like the agency to consider imposing a civil money penalty in lieu of disqualification.

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. In this case, the Appellant did request a civil money penalty in its reply to the charge letter, but there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), a civil money penalty in lieu of permanent disqualification for trafficking cannot be granted in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify 128 P & L Deli Grocery Corp. from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, 128 P & L Deli Grocery Corp., under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON
Administrative Review Officer

April 17, 2018