

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

**188 Utica Grocery Inc,**

**Appellant,**

**v.**

**Case Number: C0200525**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of 188 Utica Grocery Inc. from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against 188 Utica Grocery Inc.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated July 24, 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 during the

months of April 2017 through June 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant, through counsel, replied to the charges in a faxed letter sent on August 3, 2017. The Appellant denied that the transactions cited in the charge letter were due to trafficking. Instead, the Appellant stated the transaction patterns were due to specific shopping habits of its customers such as leaving their purchases in a cart to eat a meal and returning to the store later. The Appellant also cited customer loyalty as a factor in the large transactions and noted that the store made deliveries to shut-ins. The Appellant requested the lowest possible CMP based on hardship to the community; however, the Appellant did not request a trafficking CMP in lieu of a permanent disqualification under the conditions specified in 7 CFR § 278.6(i). The Appellant requested a decision from the Retailer Operations Division “as soon as possible.”

On August 8, 2017, the Appellant’s counsel faxed a signed letter from the store owners authorizing counsel to represent the Appellant. The fax also included an August 7, 2017 letter from counsel requesting an extension of time to gather and provide documentation including store receipts and invoices. The Retailer Operations Division appears to have overlooked this faxed document and did not acknowledge the extension request.

After considering the Appellant’s responses from August 3, 2017 and the evidence in the case, the Retailer Operations Division issued a determination letter dated August 21, 2017. The determination letter was directly addressed to the Appellant store owners and not directly to the Appellant’s counsel. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant’s eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated August 29, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division’s determination. The request for administrative review was granted. The Appellant was informed that it

could submit additional information, evidence or contentions up to October 7, 2017. However, the Appellant provided no further response.

### STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### CONTROLLING LAW AND REGULATIONS

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

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

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

7 CFR § 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 ...*

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(a) states, in part:

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

7 CFR § 278.6(i) states, in part:

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

7 CFR § 278.6(b)(2) states, in part:

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

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

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through June 2017. This involved the following transaction patterns which are trafficking indicators:

**Charge Letter Attachment 1:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 16 sets of 39 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

**Charge Letter Attachment 2:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 100 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its response to the charge letter and in its request for administrative review, in relevant part:

- The Appellant denies that any trafficking has taken place at 188 Utica Grocery Inc. and requests that the decision be reversed.
- Although some of the transactions are of an unusual frequency or unusual large amount, it is unfair and arbitrary to arrive at the conclusion of trafficking with no solid evidence but suspicion.
- Customers will make a purchase and leave their items in a cart in the store to go out to eat. They will then return to the store and make an additional purchase or two.
- Once a customer came in twice in one day and purchased 12 bottles 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On another occasion, a customer came in and made an early morning purchase and later her husband came in and purchased most of the corn beef in stock.
- Customers gravitate to the store for food purchases because it does not sell beer. The store sells some higher priced items such as infant formula.
- Some customers will make their largest purchases at the end of the month or when benefits become available.
- The store has been in operation for 35 years and has a loyal customer base that depends on the store for their every need. The store also provides delivery services to shut-ins.
- The Appellant has provided purchase invoices from the review period. These receipts and invoices show there is no “foul play” conducted in the store but only valid transactions.
- The Retailer Operations Division did not issue a warning notice regarding the irregular transactions and waited for three (3) months before issuing a charge letter.
- The Appellant at least asks for the very lowest CMP due to the vital purpose the store plays in the neighborhood.
- The Retailer Operations Division never responded to the faxed letter dated August 7, 2017 requesting an extension of time to respond to the charge letter. When the Retailer Operations Division issued its

determination letter it did not provide a courtesy copy to Appellant's counsel.

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

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized 188 Utica Grocery Inc. for the SNAP on February 20, 2008. The Retailer Operations Division classified 188 Utica Grocery Inc. as a small grocery store during the review period.

A store owner signed the SNAP application for the store on December 27, 2007 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking.

### **Store Visit Report**

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 27, 2017 store visit conducted by an 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 store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- 188 Utica Grocery Inc. is approximately 900 square feet in size.
- The store had no shopping carts and only ten (10) shopping baskets for customer use.
- There were two (2) cash registers and two (2) point of sale devices at the checkout.
- The store had no optical scanners and no conveyor belts at the checkout.
- There was no food stored outside of public view in a storage area.

- The store did not take telephone orders or online orders.
- There was an exterior store sign which showed the store name as 1 Stop Groceries Plus. This sign said that free delivery was available; however, store personnel said the store did not make deliveries.
- There were no large bulk foods, international or specialty foods that might sell for a high price. The store does not sell food in bulk such as fresh meat/seafood bundles or large boxes of fruits and vegetables. The highest priced items at the store were infant formula and Nescafe coffee.
- The checkout area consisted of a small countertop with no more than two (2) feet by two (2) feet of empty space for stacking purchases. The countertop was surrounded by plastic shelving with products for sale. There was also a large reach-in cooler in front of the counter. Due to the limited space, the checkout area was not conducive to conducting large dollar transactions.
- There were some empty and broken coolers and ice crystals had formed on some frozen food indicating that stock turnover was not frequent.

The inventory of staple food items at the time of the store visit was typical of a small grocery store with limited staple food. Although the store had some fresh produce and deli meats, the food inventory consisted mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco, mobile phones and phone cards; automotive supplies, health and beauty products, paper goods, cleaning products, general houseware, gift items, party goods, and souvenirs.

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

### **Trafficking Case based on Irregular Transaction Patterns**

The Appellant states that the Retailer Operations Division based its decision on speculation without any solid evidence. Although the Appellant admits that the transactions cited in the charge letter may be of unusual frequency or unusual large amount, the Appellant claims that the permanent disqualification determination was unfair and arbitrary.

With regard to these contentions, FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns, often with other factors such as, in this

case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. It should also be noted, as stated above, that this administrative review is based on a preponderance of the evidence standard.

The legality of this method is supported by 7 CFR §278.6(a) which states, *inter alia*, “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.]

### **Multiple Transactions by the Same Household within a Short Time Period**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store’s stock and facilities and are thus indicative of trafficking. It is also noteworthy that every single transaction in each group of transactions cited in the charge letter exceeds the average SNAP transaction for a Kings County, New York small grocery store during the review period.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer’s food inventory and infrastructure. Charge Letter Attachment 1 lists 16 sets of 39 transactions **t5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E)**. It is not credible that the Appellant store would have suspicious SNAP transactions exceeding the average SNAP transaction of a Kings County supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times during a short time period.

The Appellant states that customers will make a purchase and leave their items in a cart in the store to go out to eat. They will then return to the store and make an additional purchase or two. This statement is insufficient to fully explain why the irregular transactions are occurring. At the time of the store visit, the Appellant store did not have any shopping carts for customer use. The Appellant also offers no proof that its customers shop in this manner and it is unlikely that any customer would leave its purchases behind while they went somewhere else thus leaving their food unattended and at the risk of being stolen. In addition, some of the irregular transaction sets consisted of three (3) or four (4) transactions spread

out 5 U.S.C. § 552 (b)(7)(E). In summary, the Appellant's contention is simply not credible.

The Appellant also stated that once a customer came in twice in a day and purchased 12 bottles 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Allegedly, on another occasion, a customer came in and made an early morning purchase and later her husband came in and purchased most of the corn beef in stock. Regarding these contentions, these are anecdotal explanations which are not supported by any evidence and are insufficient to explain the multiple large dollar transactions occurring in the store over a short time period.

The Retailer Operations Division determined that the transactions cited in Charge Letter Attachment 1 consist of multiple large dollar transactions which cannot be supported by the conditions observed at the store. The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. In addition to the store's limited checkout space which is unsuitable for large transactions, 188 Utica Grocery Inc. has only no shopping carts for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Excessively Large Transactions**

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 2 cites 100 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar- sized competitors offering similar food items.

The Appellant states that some customers will make their largest purchases at the end of the month or when benefits become available. Regarding this contention, it is true that SNAP recipients tend to shop when their benefits become available, but it is not credible that these recipients would expend such large amounts typical of a supermarket or superstore at a small grocery store with limited staple foods.

The Appellant states that customers gravitate to the store for food purchases because it does not sell beer. The store does sell some expensive items such as infant formula. However, these contentions are insufficient to explain why the store would have so many transactions that are significantly higher than the average SNAP transaction for a supermarket or superstore in Kings County, New York.

The Appellant states that the store has been in operation for 35 years and has a loyal customer base that depends on the store for their every need. Allegedly, the store also provides delivery services to shut-ins. Although the store may have loyal customers, it is unlikely that 188 Utica Grocery Inc. would have large dollar transactions that exceed the average transactions at supermarkets and superstores in Kings County. In addition, store personnel stated that the store did not make deliveries when interviewed by the store visit contractor.

Sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile radius of 188 Utica Grocery Inc. there are 255 SNAP authorized stores. These SNAP authorized stores include 12 supermarkets and seven (7) superstores. A government report on SNAP benefit redemption patterns<sup>1</sup> revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery store with limited staple foods like 188 Utica Grocery Inc.

Lastly, the Retailer Operations Division conducted a detailed analysis of three (3) households that were cited in the charge letter to compare their shopping patterns at 188 Utica Grocery Inc. to those at other SNAP authorized stores. All of these households had access to, and shopped at, supermarkets and superstores. However, despite this access to larger and better stocked stores, these sampled households conducted excessively large transactions at 188 Utica Grocery Inc. **5 U.S.C. § 552 (b)(7)(E)** of shopping at these larger stores. It is highly unlikely that a small grocery store with limited staple foods would have legitimate SNAP transactions greater than, or comparable to, these larger and better stocked supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the limited number of shopping carts support the Retailer Operations Division determination. Based on a preponderance of the evidence, the

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<sup>1</sup> "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

## Purchase Invoices

The Appellant provided 89 photocopies of the store's purchase receipts and invoices as evidence that its food inventory supported its SNAP redemptions during the review period. The Appellant states that these receipts and invoices show there is no "foul play" conducted in the store but only valid transactions.

A review of the casefile documents that the invoices and receipts submitted by the Appellant's counsel were fully analyzed by the Retailer Operations Division to determine if the store purchased a sufficient amount of eligible food items to support the SNAP redemptions for the review period. The Retailer Operations Division only excluded those invoices that were outside the review period or which were illegible. The invoices document that the store purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in eligible food items during the review period. However, over 74 percent of these purchases were for low-cost items such as beverages and snack food items.

The Retailer Operations Division applied a 40 percent markup over the wholesale price to arrive at estimated retail food sales 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This resulted in a shortfall of food inventory to SNAP redemptions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) even before taking into consideration that the store likely sold food in cash and credit card transactions.

The Appellant's counsel stated that it did not provide photocopies of all of the store's invoices and receipts for the review period. It should be noted that the store visit conducted did show the store carried a limited to modest variety of eligible food items which included some fresh produce, dairy, eggs and deli meat and cheese as well as canned and packaged food items. The store also had a small supply of infant formula and baby food which was not reflected in the invoices and receipts provided by the Appellant's counsel. Although the Appellant was given additional time to October 7, 2017 to provide any additional evidence including any remaining receipts or invoices, no further correspondence was received from the Appellant or Appellant's counsel.

However, even if the store had a sufficient food inventory to support its SNAP redemptions, it would still not explain the irregular SNAP transactions cited in the charge letter. Violating firms often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. In such cases, a store would normally have a sufficient amount of food inventory to support its SNAP redemptions, but would still be in violation of SNAP rules against trafficking. In the absence of a credible explanation for the

irregular transaction patterns, the most likely explanation is that they are a result of the store trafficking in SNAP benefits.

### **Lack of Prior Notice or Warning**

The Appellant states that the store owners were not warned of any violations prior to the issuance of the charge letter. Regarding this contention, the SNAP regulations do not require the Retailer Operations Division to give prior warnings before issuing a charge letter for trafficking. SNAP regulations at 7 CFR §278.6(e)(7) states that FNS will “send the firm a warning letter if violations are too limited to warrant a disqualification.” However, trafficking transactions are not considered to be “violations that are too limited to warrant a disqualification.” Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification. Therefore, the Appellant’s contention does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Hardship to SNAP Community**

The Appellant states that a permanent disqualification will create a hardship for the SNAP community that relies upon the store. Therefore, the Appellant asks for the very lowest CMP due to the vital purpose the store plays in the neighborhood. Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a less than permanent disqualification.

However, the regulations at 7 CFR § 278.6(f)(1) clearly state that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a **permanent** disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted that the Retailer Operations Division determined that there are 255 SNAP authorized stores located within a one-mile radius of the Appellant store including 12 supermarkets and seven (7) superstores. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of 188 Utica Grocery Inc.

## **Appellant's Extension Request**

The Retailer Operations Division appears to have overlooked the August 8, 2017 fax which contained the attorney authorization and representation form and the extension request dated August 7, 2017. As noted by the Appellant, the Retailer Operations Division never responded to the extension request. In addition, when the determination letter was issued it was addressed to the store owners and counsel did not receive a courtesy copy.

Although the Retailer Operations Division did not respond to the extension request and did not address counsel in its determination letter, the Appellant has not shown that it suffered any harm due to this. Although the Retailer Operations Division failed to address the determination letter to counsel, the Appellant was still able to timely request an administrative review and have all of its contentions fully considered.

The Appellant was then given a full opportunity to provide any information, evidence or contentions during this administrative review process. The Appellant was notified in the September 7, 2017 letter accepting its appeal that it had until October 7, 2017 to provide additional information, evidence or contentions. However, as of December 11, 2017, there has been no further communication from the Appellant or Appellant's counsel. Therefore, the Appellant's contention does not provide any grounds for reversal or modification of the permanent disqualification decision.

### **CIVIL MONEY PENALTY**

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. Even if the Retailer Operations Division had responded to the August 7, 2017 letter requesting an extension, it would not have had the authority to grant an extension to 10-day time period for requesting a trafficking CMP at 7 CFR § 278.6(b)(2)(ii) and (iii).

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges indicate that trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against 188 Utica Grocery Inc., Appellant, is sustained.

## **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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.

RONALD C. GWINN  
Administrative Review Officer

December 11, 2017