

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

**210 Supermarket Corp/ 210
Supermarket,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0208615

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that 210 Supermarket Corp/210 Supermarket, (hereinafter-Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated August 14, 2018.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated June 5, 2018, 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 October 2017 through March 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In a facsimile dated June 18, 2018, Appellant replied to the charge letter and generally stated that the SNAP program is the lifeline of the business and without SNAP, it would likely have to close the store and cease operating. We are located in an area populated with many low-income families who compose the vast majority of our clientele. Therefore, we understand the importance of adhering to all of the rules and regulations of the SNAP program. We take extensive measures to adhere to the code of the SNAP program and to ensure that all of our employees are aware of why that code must be upheld. At this business, we do not engage in any practice that may be deemed detrimental to the program. We do not provide credit to clients, we do not sell any unauthorized items and we do not perform any form of trafficking. We are a large store, a supermarket, with hand carried baskets that clients use to complete their purchases.

In Attachment 1, we are the main store in a residential neighborhood and we carry an extensive inventory of food options to fulfill every type of need. Clients who live in proximity of the store come by and make purchases multiple times throughout the day. In Attachment 2, I was not aware of any restrictions on the amount of times a client can use their benefit card. I have no control over how a SNAP recipient chooses to make their personal purchases. In Attachment 3, this is a sole source store; our clients can easily expend all their benefits here. We have families that will come in and do all their monthly shopping in one purchase due to time restraints and we also have clients that will make their personal purchases, then charge items for another family member separately to obtain a separate invoice and then the other family member will reciprocate when they receive their benefits. In Attachment 4, it is extremely feasible to spend the amounts presented in the report. Commonly purchased items in the grocery section can also easily contribute to a high invoice. Rice sold at \$12.99 for a 20lb bag and cooking oils are from \$9.99 to \$12.99. Appellant provided a number of invoices and receipts in support of its position and copies of photographs of the store and the stock. Appellant stated that it holds semi-annual training sessions to ensure that the employees are all well versed in all the aspects of the business and follow the regulations of the SNAP program.

Retailer Operations Division issued a Determination letter dated August 14, 2018. The letter informed Appellant that it was permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also stated that Retailer Operations Division considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated August 16, 2018, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. In a facsimile dated February 15, 2019, Appellant submitted an executed power of attorney for representation by **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has

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

CONTROLLING LAW

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

7 CFR § 278.6(a) states, *inter alia*, that “FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system ...**” (*Emphasis added*)

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

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

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

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the six-month period of October 2017 through March 2018. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made too rapidly to be credible.
2. Multiple transactions were made from the accounts of individual SNAP households within a set time-period.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

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

APPELLANT'S CONTENTIONS

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

- I offer a large variety of grocery food items, deli, produce and other food products that are used for daily consumption. It can be very easy for a participant to expend a large or even all of their benefits at this store.
- I sent receipts for purchases and pictures of the inside of the store to show the display of different types of products to be sold to our customers.
- I sent the signed documentation given after a training session showing that I have provided the corresponding training to my workers in regarding the rules and regulations of the SNAP program.
- Many of the business in the area have lost their authorizations, which has created a rise in my EBT transactions.
- My business would not survive a disqualification and may be forced to close like the majority of the businesses in the area. The income generated by the EBT transactions, determine the continued operations of our store.

Appellant provided 16 black and white photographs of the store's stock. Appellant also provided over 600 pages of invoices, receipts and ledger reports for the review period.

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

ANALYSIS AND FINDINGS

The FNS authorized the business as a medium grocery store on September 15, 2014. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during an April 18, 2018, store visit to the business conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

- One cash register and one POS device with an L-shaped counter area partially obstructed by other smaller items available for sale.
- Estimated to be approximately 2800 square feet.
- One shopping basket and no shopping carts available for customers.
- No adding machines or optical scanners were available at checkout. No specialty registers present.
- Store does not operate through a night window or plastic barrier with food stock behind the barrier.

- No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
- Pricing structure is not unusual, such as ending most products with 00 cents. Store does not round transaction totals.
- No food stored in an area outside of public view and store does not have storage freezers or coolers.
- Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
- No food stored off-site.
- Store does not take telephone or online orders and does not offer delivery
- Highest priced eligible food items were Enfamil (\$19.99), NIDO (\$22.99), Enfamil Gentlease (\$20.00) and Boar's Head Ham (\$9.99).
- Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, alcohol products, cleaning products, toys, .
- Store stocks moderate amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products. Fresh meat items were minimal.
- Kitchen/prepared food area with hot foods sold for onsite consumption.
- Food is sold for on – site consumption with a microwave available for heating.
- A deli or prepared food section where stock is used in preparation of food.
- No meat or seafood specials, bundles, or fruit/vegetable boxes sold.

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

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

There were 34 SNAP transactions that met the parameters of this attachment. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These types of rapid transactions at a firm with only one register and limited counter space are indicative of trafficking in EBT benefits. Retailer Operations considered this to be a strong indicator because the second purchase of items would have to be transported to the counter area without shopping carts and only one hand basket available for customer use. When considering the time required to process a legitimate purchase and the numerous steps involved, to include the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions appear to have been made too rapidly to be credible and are indicative of trafficking. Appellant has one cash register and one POS device in which to process SNAP transactions.

Appellant, through representation contends that it is the main store in a residential neighborhood and carry an extensive inventory of food options to fulfill every type of need. Clients who live in proximity of the store come by and make purchases multiple times throughout the day.

Regarding this contention, it is reasonable to expect the subsequent purchase to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. However, in many of the Exhibits, the subsequent transaction(s) were for amounts that exceed any nominal, afterthought purchase. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction amount. Additionally, while it is possible that customers shop together, it is improbable that they would use just one card if they were both SNAP recipients. If forgotten items are not added into the total, it is implausible that they would merely swipe the EBT card a second time to include those items without totaling them, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to complete the entire transaction. However, the vast majority of the violations listed in this attachment followed a transaction by a different household. Out of 34 total sets of violations, 31 were conducted by a household different from that, which made the first transaction in the set.

Moreover, it may be possible to conduct rapid transactions for SNAP recipients who may have one or two small inexpensive items however, given that there were no promotional, special, bulk or package deals offered or advertised; it is unlikely that the Attachment 1 transactions are legitimate SNAP transactions. Although, the firm's checkout counter area offered ample surface space on which to place items for large purchases, it did not offer equipment required for rapid processing of large amounts of eligible food items. It also precluded the processing of more than one customer at a time, as there is only one register and one POS device. Taking into consideration the time required to process a legitimate purchase and the steps involved:

1. Placing items on the counter to be purchased and, in this case, holding items that didn't fit on the counter due to the size of the counter space or going back to gather additional items that could not be carried to total the large transaction amounts;
2. Separating eligible from ineligible items;
3. The cashier's handling of individual items to determine the price, which in this case involved looking them up on the register since Appellant contends that the register is linked to the internet;
4. Weighing individual items if sold by weight;
5. Entering prices into the register or in this case clicking on the items once found;
6. Bagging the items for carry out;
7. Handing the customer bagged items to make room for more food items the customer is either holding or bringing to the counter;
8. Informing customer of the totals;
9. Pressing the "SNAP transaction key" on the point-of-sale device;
10. Swiping the card and cashier pressing the appropriate sales buttons and entering the sale amount;
11. Customer entry of the required pin number;
12. The system processing and approving of the transaction given the recipient has adequate SNAP benefits;
13. Printing out the receipt;
14. Totaling ineligible items, if applicable, for a cash or credit payment;
15. Customer removing purchased items from the checkout area in order for the next customer to in line to begin the next transaction.

While such transactions may well be done in succession, performing these processes on large transactions generally are not done rapidly. The amount of time required is, largely, proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time-period between transactions. Appellant firm processed orders considerably faster than supermarkets typically process them, yet the firm has only one medium checkout counter, no optical scanners and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations.

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

Attachment 2 of the Charge Letter - Multiple transactions were made from the accounts of individual SNAP households within a set time-period.

There were 57 sets of 131 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time-period is a method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant, through representation, contends that it was not aware of any restrictions on the amount of times a client can use their benefit card. It has no control over how a SNAP recipient chooses to make their personal purchases. With regard to this contention, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities, the makeup and shopping patterns of SNAP household, and are indicative of trafficking.

Moreover, it is not illegal for SNAP households to make two or more purchases during the same store visit; however, it is unlikely that legitimate purchases of eligible foods are being made when such transactions are of large dollar values, or cumulatively large values, and they are processed in less time than it would take to hand-carry the items to the counter and to ring up all the food items necessary to add up to those large dollar amounts. The store visit report does not indicate any compelling reason for customers to consider Appellant a first choice destination to fulfill large purchases of food, or that they would have made relatively large, multiple purchases at the firm within a set time-period, there being no great price advantage, profusion of specialty or ethnic goods, or special or custom services rendered. It is also not illegal for a SNAP household to make larger transactions at Appellant's store than they do at full-line supermarkets at which they also shop which generally have a better variety of food at lower prices. Such shopping behavior would be considered unreasonable for a household; however, when a number of households shop like this, it supports a conclusion that trafficking is occurring,

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There were a total of six SNAP transactions that took place before the stores' posted hours of operation. Additionally it is implausible that households would expend large amounts of SNAP benefits on multiple visits at Appellant's store when there were

several larger better stocked SNAP authorized retailers in less than a mile from Appellant's store.

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 2 are due to trafficking in SNAP benefits.

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

There were 32 sets of 48 SNAP transactions that met the parameters of this attachment in which individual recipient benefits were exhausted or nearly exhausted. Appellant contends that it offers a large variety of grocery food items, deli, produce and other food products that are used for daily consumption. It can be very easy for a participant to expend a large or even all of their benefits at this store.

Studies of historical transaction data shows that SNAP recipients do not normally exhaust their benefits in one or two transactions on the same day. A government report¹ on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or in a single day. Depleting one's entire allotment in one or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP benefit households. Rather, multiple transactions, over a short period, especially of high dollar value or high cumulative values, are indicative of attempts to diminish attention to signs of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In conclusion, it is therefore more likely true than not true that the irregular transactions cited in the charge letter Attachment 3 are due to trafficking in SNAP benefits

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

There were 337 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. The firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

Appellant contends that many of the business in the area have lost their authorizations, which has created a rise in my EBT transactions. With regard to this contention, the record reflects that there are at least seven SNAP authorized retailers within one mile of Appellant's store however

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

the records reflects that Appellant's dollar volume is 19% higher than comparable or better stocked medium grocery stores in Bronx County, New York which is an indication of trafficking

Appellant provided, with its response to the charge letter, over 600 pages of invoices, receipts and ledger reports for the review period. Some of the documents were illegible and some had dates that could not be verified. Upon review, it appears that the invoices are sufficient to demonstrate that Appellant purchased enough inventory to support the amounts of its SNAP transactions. Still, there is not enough information to determine whether they account for the sum of Appellant's SNAP and non-SNAP transaction activity. While the overall dollar amount of SNAP activity is relevant, the charge letter did not cite as evidence Appellant's SNAP sales total. Rather, the Retailer Operations Division identified a series of different suspicious transaction patterns.

Retailer Operations also conducted an analysis of the shopping habits of four of the households identified in the charge letter. This analysis concluded that these households also shopped at other area grocery stores including full-line supermarkets and superstores that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm. This again indicates that lack of access to other stores is not at issue. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the store time and distance report, the household would have had to drive at a high rate of speed (97 mph) in order to make it from the Appellant's store to the super store, without stopping, shop for the items needed to total the transaction amount and checkout. It is important to note that the transaction at Appellant's store was a manual transaction, whereas the superstore transaction, located 71 miles away, was swiped. This is an indication that the EBT card was not present at Appellant's store when the manual transaction took place which is a violation of the SNAP program and suggestive of trafficking. Moreover, despite access to large supermarkets and superstores, households consistently conducted much higher transactions at the Appellant firm than at better-stocked supermarkets/superstores in and around the Bronx County area of New York. This is another strong trafficking indicator.

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

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to

support a conclusion that the matter asserted is more likely to be true than not true. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by the suspicious patterns in four attachments of EBT transaction data, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other medium grocery stores in the County and State.

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. Therefore, based on this empirical data, and in the absence of evidence for the legitimacy 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 evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

The purpose of the administrative review process is to ensure that firms aggrieved by Retailer Operations Division' adverse actions have the opportunity to have their position fairly considered by an impartial review authority prior to that adverse action becoming final. Appellant has been duly given, and has taken the opportunity to present to USDA through the administrative review process whatever evidence and information it deems pertinent in support of its position that Retailer Operations Division' adverse action should be reversed. Therefore, any evidence and information that Appellant presented to Retailer Operations Division, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to Appellant's right to a fair and thorough review.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated June 5, 2018, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant contends, through representation, that it sent the signed documentation given after a training session showing that it had provided the corresponding training to workers regarding the rules and regulations of the SNAP program.

The issue to be decided here, then, is whether, through a preponderance of the evidence, that Appellant had an effective policy and program to prevent trafficking violations that was fully in accord with the provisions of 7 CFR §278.6(i), and thus that it is eligible for a CMP.

7 CFR §278.6(i) specifies that in order for a firm to qualify for a CMP in lieu of permanent disqualification, it must submit substantial evidence that it has fulfilled each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm...”

As it relates to the above Criteria 1 and 2, 7 CFR §278.6(i)(1), entitled “Compliance policy standards,” provides the following, in relevant part:

“...in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current SNAP regulations and current SNAP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm’s policy and program to ensure SNAP compliance and to prevent SNAP violations, FNS may consider the following:

1. Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating SNAP regulations;
2. Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of SNAP violations or irregularities committed by firm personnel;
3. Documentation of the development and/or continued operation of procedures for internal review of firm employees’ compliance with SNAP regulations;
4. The nature and scope of the violations charged against the firm;
5. Any record of previous firm violations under the same ownership; and
6. Any other information the firm may present to FNS for consideration.”

As it relates to the above Criterion 3, 7 CFR §278.6(i)(2), entitled “Compliance training program standards,” provides the following, in relevant part:

“...the firm shall have developed and implemented an effective training program for all managers and employees on the acceptance and handling of (SNAP benefits)...A firm which seeks a civil money penalty in lieu of a permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FNS shall consider a training program effective if it meets or is otherwise equivalent to the following standards:

- (i) Training for all managers and employees whose work brings them into contact with (SNAP benefits) or who are assigned to a location where (SNAP benefits) are accepted, handled or processed shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of employment. All employees shall be trained periodically thereafter;
- (ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this part 278;
- (iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program.

Training materials shall clearly state that the following acts are prohibited and are in violation of the Food and Nutrition Act and regulations: the exchange of...(SNAP benefits)...for cash...”

With regard to Appellant’s contention and upon review, the alleged training documents provided by Appellant appeared contrived. The training sessions appeared to begin August 8, 2016 and not September 2014 when the store was first authorized. The documents also show three agenda items, per training session, starting at 1, 2, 3 and going up to 12. However, the documents were signed and dated in reverse making the alleged first training session (10, 11, 12) dated August 8, 2016, two years before the alleged last training session, dated February 13, 2018, which has an agenda labeled (1, 2, 3). This is a strong indication that these documents were fabricated in an attempt to appear that regular training sessions took place. It is the determination of this review that Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

Appellant contends that the business would not survive a disqualification and may be forced to close like the majority of the businesses in the area. The income generated by the EBT transactions, determine the continued operations of our store. 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 assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship of 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, ownerships contention that the firm may incur economic hardship and forced to close based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CONCLUSION

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

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify 210 Supermarket Corp/210 Supermarket from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against 210 Supermarket Corp/210 Supermarket is sustained.

RIGHTS AND REMEDIES

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

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

Monique Brooks
Administrative Review Officer

February 26, 2019