

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

250 J.B. Food Center, Inc,

Appellant,

v.

Case Number: C0200932

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 there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against 250 J.B. Food Center, Inc. (hereinafter "J.B. Food Center") by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against J.B. Food Center on September 28, 2017.

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 August 17, 2017, the Retailer Operations Division informed the Appellants that J.B. Food Center was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a letter to the Retailer Operations Division dated August 28, 2017 and in telephone conversations on September 18, 2017 and September 19, 2017, the Appellants denied the trafficking allegations and cited credit extension to a select few loyal SNAP customers as well as

other explanations for the questionable SNAP transactions that were outlined in the August 17, 2017 Charge Letter.

After considering the Appellants' replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated September 28, 2017, informing the Appellants that J.B. Food Center was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked October 6, 2017, the Appellants requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellants' request for administrative review by letter dated October 12, 2017.

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 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.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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, 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].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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 § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(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 penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellants were charged and determined to be trafficking based on an analysis of EBT transaction data from February 2017 through July 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANTS' CONTENTIONS

The following represents a brief summary of the Appellants' contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter and in the review request postmarked October 6, 2017, the Appellants stated the following summarized contentions, in relevant part:

- The Appellants deny that trafficking of SNAP benefits took place at J.B. Food Center.
- J.B. Food Center has been operating for over fourteen years. In that time period, the store has not been cited for any SNAP violations proving that it is a law abiding business.
- Some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of J.B. Food Center accepting SNAP benefits as repayments on credit accounts from a select few loyal SNAP customers upon receipt of their monthly EBT benefit allotments.
- In addition to credit extension, the multiple purchase transactions made from individual household accounts in short timeframes are the result of customers spending a large amount of their SNAP benefits at J.B. Food Center instead of visiting multiple stores for the products they need. Customers also come back to the store multiple times throughout the day and week. Sometimes a customer will make a large purchase of groceries and then return around lunch time for a sandwich and some deli meats from the deli. A customer may come to buy their groceries for the entire week, carry all of the shopping bags to their home, and return to the store to purchase additional foods as it is not feasible to carry or eat their sandwich or lunch while carrying a large amount of groceries. Also, many of the area's residents are immigrants whose family members shop together and make separate purchases or sometimes ask store employees to divide the SNAP transaction into two separate purchases.
- In addition to credit extension, the excessively large purchase transactions are the result of J.B. Food Center being a medium sized store operating in a very high traffic area. The store carries a large inventory of food products. Customers rely upon J.B. Food Center for most of their daily food needs. Many of the food products stocked at the store have high prices making it very feasible for customers to make the large purchases cited in the Charge Letter Attachments. For example, J.B. Food Center carries: Double-size cereals at \$10.99; a 20 pound bag of Carolina®, Canill®, and Riceland® brand rice at \$10.99; a 2.5 gallon container of corn oil at \$23.99 and a one gallon container at \$10.99; Goya® olive oil in a range of sizes which cost up to \$9.99; Pompeiiian® olive oil at \$10.99; green plantains at 3 for \$1.00 and ripe plantains at 3 for \$2.00; salami for \$17.99; Boar's Head® ham at \$8.49 per pound; deli cheeses at \$6.99 per pound; and instant iced tea at \$6.99.

- A permanent SNAP disqualification will impose a hardship on area SNAP customers who rely upon J.B. Food Center for their food needs.
- A permanent SNAP disqualification will impose a financial hardship on J.B. Food Center and would inevitably lead to the closure of the store.
- The Appellants request that FNS impose a civil money penalty (CMP) in lieu of a permanent SNAP disqualification as they hold quarterly training sessions to review the SNAP rules and regulations with employees.

In support of the Appellants' contentions, the following documents were submitted to FNS:

- Vendor receipts for foods purchased during the review period;
- Five cash register receipts showing 4 debit purchases and 1 credit card purchase;
- Cash register print-outs for several cash, credit card, and debit purchases made during the review period;
- 15 Photos showing food items stocked at J.B. Food Center;
- Signed and notarized affidavits from seven different SNAP customers attesting that J.B. Food Center sometimes extends them credit when their EBT benefits are depleted;
- Credit ledgers dated during the review period for each of the seven customers who signed affidavits. The ledgers indicate that credit was extended to each customer on four different dates; and
- Three SNAP Training Session logs dated October 14, 2015, April 20, 2016, and October 19, 2016. Each Training Session log was signed by two different store employees and the store manager/owner.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized J.B. Food Center as a small grocery store on December 23, 2003. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 30, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,000 square feet in size and it does not have a storage area/room or cooler/freezer outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- Typical small grocery store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- No meat/seafood specials or bundles that might sell for high prices;

- A WIC Program vendor and it stocks infant formula, fruits/vegetables, cereal, and meats;
- The four most expensive foods in stock are vegetable oil at \$23.99 per 2.5 gallon container, Enfamil® infant formula at \$20.00 per 12.5 oz. can, rice at \$10.99 per 20 pound bag, and deli meats at \$8.49 per pound;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals;
- Very limited checkout counter area obstructed by a chest freezer that stocks ice cream. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream only;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meat, poultry, or seafood;
- A deli case/section in which deli meats and cheeses are sold by the pound. A menu board is posted in the store which lists the prices of the deli meats and cheeses;
- Other meat items include sausage, hot dogs, bacon, canned/potted meat, canned fish, canned shellfish, and eggs;
- A kitchen in which hot and cold prepared, ready-to-eat foods (made-to-order sandwiches) that are intended for immediate consumption and require no additional preparation are prepared and sold. A menu board is posted in the store which lists the prices of the made-to-order sandwiches which are \$4.00 and \$5.00 each;
- A minimal variety of canned fruits in limited quantities;
- A moderate variety of fresh produce;
- Other staple foods available for purchase include such items as 100% juice, soup, canned vegetables, milk, margarine, yogurt, pasta, bread, cereal, flour, corn meal, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, coffee, sugar, and oil; and
- Ineligible nonfood items include such items as tobacco products, health and beauty items, paper products, household cleaning supplies, alcohol, over-the-counter medications, phone cards, etc.

This documentation reflects that the firm is a typically stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small grocery store in Bronx County, New York (the county in which J.B. Food Center is located) during the analysis period was \$9.69, reflecting that large purchases are not routinely made in such stores. On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellants’ contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Charges

Regarding the Appellants’ contention that they deny the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellants demonstrate by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellants demonstrate by a preponderance of the evidence that trafficking did not occur in the Appellants’ firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

First Time Violator

The Appellants contend that J.B. Food Center has been operating for over fourteen years. In that time period, the store has not been cited for any SNAP violations proving that it is a law abiding business. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. 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.

Credit Transactions

The Appellants contend that some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of J.B. Food Center accepting SNAP benefits as repayments on credit accounts from a select few loyal SNAP customers upon receipt of their monthly EBT benefit allotments. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit

transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellants provided FNS with the following documents as evidence that credit was extended to SNAP customers during the six month review period:

- Signed and notarized affidavits from seven different SNAP customers attesting that J.B. Food Center sometimes extends them credit when their EBT benefits are depleted; and
- Credit ledgers dated during the review period for each of the seven customers who signed affidavits. The ledgers indicate that credit was extended to each customer on four different dates.

FNS reviewed the information/documentation provided from the Appellants and properly determined that the information was insufficient to support the Appellants' credit extension contention for the following reasons:

- The Appellants provided FNS with signed and notarized affidavits from seven different SNAP customers attesting that J.B. Food Center sometimes extends them credit when their EBT benefits are depleted. With regards to the customer affidavits provided by the Appellants which purport to establish that the questionable SNAP transactions were legitimate and the result of credit extension and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP customer to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer affidavit provided would attest to questionable transactions being legitimate;
- For each of the seven SNAP customers who signed affidavits, four credit ledgers with hand-written dates were provided (Note: One of the customer credit ledgers did not include any dates). Each of the credit ledgers lists the individual food items purchased on credit, the price of the individual food items, and the total amount of the transaction. A comparison of the total credit transaction amounts noted in the credit ledgers against the SNAP transactions listed in the Charge Letter Attachments indicates that none of the credit ledger transactions were listed in the Charge Letter Attachments. Therefore, since the transaction amounts documented in the credit ledgers do not match any of the SNAP transactions listed in the Charge Letter Attachments, the credit ledgers do not validate that the questionable SNAP transactions included in the Charge Letter are the result of credit extension and subsequent payment with EBT benefits by SNAP customers.
- No documentation was provided that validates whether the alleged credit was paid off by cash, credit/debit card, personal check, or SNAP benefits;
- No documentation was provided that validates the dates to which the food items were purchased on credit. The dates included on the credit ledgers were hand-written;
- No documentation was provided that validates that the credit extended to each SNAP customer was done so during the six month review period. The dates included on the credit ledgers were hand-written; and

- No documentation was provided that validates the amount of credit that was extended to each customer during the six month review period. The transaction amounts included on the credit ledgers were hand-written.

In conclusion, although J.B. Food Center may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellants does not support the Appellants' contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 18 transaction sets (37 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for small grocery stores in Bronx County during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellants contend that in addition to credit extension, the multiple purchase transactions made from individual household accounts in short timeframes are the result of customers spending a large amount of their SNAP benefits at J.B. Food Center instead of visiting multiple stores for the products they need. Customers also come back to the store multiple times throughout the day and week. Sometimes a customer will make a large purchase of groceries and then return around lunch time for a sandwich and some deli meats from the deli. A customer may come to buy their groceries for the entire week, carry all of the shopping bags to their home, and return to the store to purchase additional foods as it is not feasible to carry or eat their sandwich or lunch while carrying a large amount of groceries. Also, many of the area's residents are immigrants whose family members shop together and make separate purchases or sometimes ask store employees to divide the SNAP transaction into two separate purchases. However, the Appellants' contentions are not supported by available evidence.

With regard to the Appellants' claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellants is not sufficient to support that these transactions were due to repayments of credit accounts. In addition, the Appellants' contention that these questionable SNAP transactions are the result of credit extension cannot be explained by the transactions found in Charge Letter Attachment 1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). If the transactions were the result of credit extension then it would be normal to see one large transaction for a credit account payment and possibly an additional smaller transaction for a purchase made by the customer. However, that is not the case.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

The Appellants contend that the multiple purchase transactions made from individual household accounts in short timeframes are the result of customers spending a large amount of their SNAP benefits at J.B. Food Center instead of visiting multiple stores for the products they need. Customers also come back to the store multiple times throughout the day and week. While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. J.B. Food Center is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of canned fruits, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for small grocery stores to have purchases such as those cited, especially when J.B. Food Center stocks only a few high priced food items so the majority of the food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at J.B. Food Center are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at J.B. Food Center, where the eligible food stock is moderate, often on the same day, or within 24 hours of their purchases at better stocked stores. This is a strong indicator of trafficking.

The Appellants also contend that sometimes a customer will make a large purchase of groceries and then return around lunch time for a sandwich and some deli meats from the deli. A customer may come to buy their groceries for the entire week, carry all of the shopping bags to their home, and return to the store to purchase additional foods as it is not feasible to carry or eat their sandwich or lunch while carrying a large amount of groceries.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are too high to be the result of SNAP customers purchasing a sandwich and some deli meats for lunch. In addition, in half (nine) of the transaction sets the second (or third) SNAP transaction is for a larger amount than the initial transaction. This also indicates that these questionable SNAP transactions are not the result of SNAP customers making an initial purchase for their weekly groceries and then making a second purchase for a sandwich and/or deli meats for lunch.

The Appellants also contend that many of the area's residents are immigrants whose family members shop together and make separate purchases or sometimes ask store employees to divide the SNAP transaction into two separate purchases. FNS acknowledges that the SNAP regulations and statute do not govern or mandate how or when a SNAP household should spend

its benefit allotment. Regulations also do not govern how frequently a customer may visit a store or whether household members should purchase items independently. SNAP benefits are issued to individual households and as such are meant to provide most of the nutritional needs of that household. Although sharing of SNAP benefits can occur, they are not intended to be used by households purchasing eligible food items for other household members or other households. Again, the SNAP regulations do not govern what happens to the food once it is purchased. However, the repetitive nature of the transactions identified in Attachment 1 are vastly different in J.B. Food Center than in any other nearby comparable firm giving credibility to the notion that trafficking is mostly likely taking place. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions are not the result of members of the same SNAP household shopping together at one time and asking for the total purchase to be separated into two (or three) separate purchases.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 181 SNAP authorized retailers located within a 1.0 mile radius of J.B. Food Center that can meet the nutritional needs of SNAP customers. These authorized stores include 7 supermarkets and 3 super stores. Several of these authorized SNAP stores are larger than J.B. Food Center and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at J.B. Food Center during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for J.B. Food Center's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellants did not provide any compelling justification as to why SNAP households are conducting multiple transactions at J.B. Food Center or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. 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 Purchase Transactions

Charge Letter Attachment 2 lists 216 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that J.B. Food Center would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellants contend that in addition to credit extension, the excessively large purchase transactions are the result of J.B. Food Center being a medium sized store operating in a very high traffic area. The store carries a large inventory of food products. Customers rely upon J.B. Food Center for most of their daily food needs. Many of the food products stocked at the store have high prices making it very feasible for customers to make the large purchases cited in the Charge Letter Attachments. For example, J.B. Food Center carries: Double-size cereals at \$10.99; a 20 pound bag of Carolina®, Canill®, and Riceland® brand rice at \$10.99; a 2.5 gallon container of corn oil at \$23.99 and a one gallon container at \$10.99; Goya® olive oil in a range of sizes which cost up to \$9.99; Pompeian® olive oil at \$10.99; green plantains at 3 for \$1.00

and ripe plantains at 3 for \$2.00; salami for \$17.99; Boar's Head® ham at \$8.49 per pound; deli cheeses at \$6.99 per pound; and instant iced tea at \$6.99. However, the Appellants' contentions are unsubstantiated.

With regard to the Appellants' claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellants is not sufficient to support that these transactions were due to repayments of credit accounts.

The Appellants contend that the excessively large purchase transactions are the result of J.B. Food Center being a medium sized store operating in a very high traffic area. The store carries a large inventory of food products. Customers rely upon J.B. Food Center for most of their daily food needs. However, the store visit observations indicate that J.B. Food Center is a **small grocery store** that is stocked with a moderate quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of canned fruits, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanners, and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The Appellants also contend that many of the food products stocked at the store have high prices making it very feasible for customers to make the large purchases cited in the Charge Letter Attachments. For example, J.B. Food Center carries: Double-size cereals at \$10.99; a 20 pound bag of Carolina®, Canill®, and Riceland® brand rice at \$10.99; a 2.5 gallon container of corn oil at \$23.99 and a one gallon container at \$10.99; Goya® olive oil in a range of sizes which cost up to \$9.99; Pompeian® olive oil at \$10.99; green plantains at 3 for \$1.00 and ripe plantains at 3 for \$2.00; salami for \$17.99; Boar's Head® ham at \$8.49 per pound; deli cheeses at \$6.99 per pound; and instant iced tea at \$6.99. In support of this contention, the Appellants provided FNS with 15 photos showing various food items stocked at J.B. Food Center.

It is important to note that during the May 30, 2017 store visit, the contracted Reviewer asked the store owner to identify the four most expensive food items stocked at J.B. Food Center which cost \$5.00 or above. The store owner noted that the following stocked food items are the most expensive costing \$5.00 or above: Vegetable oil at \$23.99 per 2.5 gallon container, Enfamil® infant formula at \$20.00 per 12.5 oz. can, rice at \$10.99 per 20 pound bag, and deli meats at \$8.49 per pound. The store owner did not indicate during the store visit that the following stocked food items are expensive: Double-size cereals at \$10.99; a one gallon container of corn oil at \$10.99; Goya® olive oil in a range of sizes which cost up to \$9.99; Pompeian® olive oil at \$10.99; and salami at \$17.99. FNS acknowledges that the purchase of vegetable oil at \$23.99, rice at \$10.99, and deli meats at \$8.49 may explain some of the excessively large purchase transactions listed in Charge Letter Attachment 2. However, the store owner did not indicate during the store visit that the additional food items noted (above) in their responses to FNS were expensive food items and therefore, it is not likely that purchases of these food items explain

some of the excessively large purchase transactions that occurred during the review period. With regard to purchases of infant formula at \$20.00 per can, it is unlikely that the purchase of this food item explains some of the excessively large purchase transactions that occurred at J.B. Food Center during the review period. J.B. Food Center is WIC Program vendor. The majority of people who qualify to participate in the SNAP also qualify to participate in the WIC Program. As such, SNAP participants usually utilize their WIC benefits/vouchers in lieu of their SNAP benefits to purchase infant formula in an effort to save their SNAP benefits to purchase other needed food items.

With regard to the variety of double-size cereals, the Appellants indicated that this is a very popular item purchased by SNAP households. The Appellants noted that these cereals cost \$10.99. FNS acknowledges that large boxes of cereals at \$10.99 were in stock during the store visit as is seen in the below photo (Figure 1). However, there is a super store located 0.13 miles from J.B. Food Center that offers the same double-size cereals in more brands and varieties as compared to the subject store. As seen in the below photo (Figure 2), this super store offers large-size cereals for \$9.99 or \$1.00 less than J.B. Food Center. As noted previously, clients shopping at J.B. Food Center are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Therefore, it is not likely that purchases of double-size cereals explain some of the excessively large purchase transactions that occurred at J.B. Food Center during the review period.



Figure 1: Double-size cereals stocked at J.B. Food Center.



Figure 2: Area super store offers larger varieties and brands of double-size cereals at \$1.00 less than J.B. Food Center.

The Appellants noted that one of J.B. Food Center's major fresh produce sellers is green plantains at 3 for \$1.00 and ripe plantains at 3 for \$2.00. However, the same super store mentioned above which is located 0.13 miles from J.B. Food Center advertises fresh green plantains at 12 for \$1.00. It is very unlikely that SNAP customers are choosing to make excessively large purchases at J.B. Food Center for the expensive food items noted by the Appellants (above) as well plantains when there are two super stores located 0.13 miles and 0.35 miles from the subject store that offer these expensive food items and plantains as well as a large variety of other food items at a comparable or better prices as compared to J.B. Food Center.

In support of their contentions, the Appellants provided FNS with copies of five cash register receipts showing 4 debit purchases and 1 credit card purchase as well as cash register print-outs for several cash, credit card, and debit purchases made during the review period. However, due to the fact that these documents show debit, credit card and cash transactions, they are not germane to this case as the questionable transactions listed in the Charge Letter Attachments are for SNAP purchases only.

The record shows that there are 181 SNAP authorized retailers located within a 1.0 mile radius of J.B. Food Store that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than J.B. Food Center and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at J.B. Food Center have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellants' location. While J.B. Food Center does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellants' business offering a greater quantity and variety of products, including fresh and frozen meats/seafood and fresh produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

FNS compared the SNAP transactions that occurred at J.B. Food Center during the review period to those that were transacted at two area comparable authorized small grocery stores located within 0.54 miles of the subject store. The comparison results are seen in the below table. J.B. Food Center significantly exceeded the two nearby comparison stores in ALERT rank, SNAP dollar volume, and ALERT Scan flags B2 (multiple purchase transactions made from individual household accounts in unusually short timeframes) and F (excessively large purchase transactions). Note: In the below tables, "SG" means small grocery store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The following table illustrates J.B. Food Center's significant differences in total transaction dollar volume and average transaction dollar amount when compared to the two nearby small grocery stores mentioned above.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The following table compares the subject store to the average small grocery store located in Bronx County, New York.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The following bar graph illustrates J.B. Food Center's significantly higher transaction spread comparison compared to the average Bronx County, New York small grocery store. This is a good indicator that trafficking is most likely occurring.

7 U.S.C. 2018 (b)(6) & (b)(7)(c)

The Appellants provided FNS with vendor invoices for the foods purchased for J.B. Food Center during the six month review period to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred during the review period. After contacting the New York State Department of Health, FNS found that J.B. Food Center is a WIC Program vendor. According to the New York State Department of Health, the following are the reported WIC redemptions conducted by the subject store during the review period.

5 U.S.C. § 552 (b)(7)(E)

The following table notes the STARS reported SNAP redemptions including the total WIC redemptions of J.B. Food Center during the review period.

5 U.S.C. § 552 (b)(7)(E)

According to the New York Department of Health and STARS, J.B. Food Center redeemed a grand total of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in WIC and SNAP benefits combined during the review period.

The following table provides an analysis of the purchase invoice log and SNAP and WIC redemptions during the review period including the Appellants' self-reported sales mark-up of 32% and the self-reported 60% SNAP sales and 40% cash sales of eligible food items.

5 U.S.C. § 552 (b)(7)(E)

The Appellants did not report to FNS that J.B. Food Center is a WIC Program vendor, did not separate WIC and SNAP sales, and did not identify which items on the vendor purchase invoices were for WIC sales. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, FNS finds that J.B. Food Center did not have the food inventories required to support the SNAP and WIC redemptions that occurred during the review period.

It is important to note that even if the vendor invoices provided by the Appellants indicated that the Appellants had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a moderate variety of stock in the store, no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, a minimal variety and amount of canned fruits, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at J.B. Food Center to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a small grocery store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at J.B. Food Center compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at J.B. Food Center often within 5 U.S.C. § 552 (b)(6) & (b)(7)(C) hours of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery store with moderate staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those 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 lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

SNAP Customer Hardship

The Appellants contend that a permanent SNAP disqualification will impose a hardship on area SNAP customers who rely upon J.B. Food Center for their food needs. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for

hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Financial Hardship

The Appellants contend that a permanent SNAP disqualification will impose a financial hardship on J.B. Food Center and would inevitably lead to the closure of the store. However, there is no provision in the SNAP regulations or internal agency policy directives 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 store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement 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 Appellants’ contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellants request that FNS impose a civil money penalty (CMP) in lieu of a permanent SNAP disqualification as they hold quarterly training sessions to review the SNAP rules and regulations with employees. There is a provision at 7 CFR § 278.6(i) of the SNAP regulations for the imposition of a trafficking civil money penalty in lieu of a permanent disqualification for trafficking if the retail store establishes that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The Appellants were advised of this provision in the Charge Letter of August 17, 2017 which also advised that documentation of eligibility for that alternative sanction was to be **substantial**, in accordance with the four criteria detailed in the referenced regulation and must be provided within a specific time limit (i.e., within ten days of the receipt of the Charge Letter). If the Appellant’s request and the required documentation are not submitted on time, he will lose his right for any further consideration for a trafficking CMP. The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a CMP may be submitted. As such, only the information that is submitted within ten days of the Appellants’ receipt of the Charge Letter may be considered by FNS when considering the Appellants’ request for implementation of a trafficking CMP in lieu of a permanent SNAP disqualification.

In a written correspondence received by the Retailer Operations Division on August 28, 2017 in which the Appellants were responding to the Charge Letter allegations, the Appellants requested consideration for a trafficking CMP in lieu of a permanent SNAP disqualification. However, the Appellants only **partially addressed** the requirements described herein and did not provide

substantial evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective policy and program to prevent violations. Therefore, in the September 28, 2017 Disqualification Letter, the Appellants were informed by the Retailer Operations Division that consideration was given to the Appellants for a CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellants were not eligible for the CMP because they failed to submit sufficient evidence to demonstrate that J.B. Food Center had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP.

To verify that the Appellants had established and implemented an effective compliance policy and program at J.B. Food Center prior to the occurrence of the SNAP violations, the Appellants submitted the following information to the Retailer Operations Division in their August 28, 2017 response to the Charge Letter allegations:

- A statement from the Appellants noting that they hold training sessions with all of the store's employees on a quarterly basis to ensure that they are familiar with the rules and regulations of the SNAP. The Appellants also review various scenarios in order to practice how to stay within the regulations of the SNAP and avoid requests and situations that would compromise those rules.
- A log documenting three training sessions that occurred on October 14, 2015, April 20, 2016, and October 19, 2016. Each training session log was signed by two different store employees and the store manager/owner. The training session logs stated the following:

Training Session:

- 1) Review of the FNS training material and Program Rules (video available through the internet);
- 2) Review of the Supplemental Nutrition Assistance Program Training Guide for Retailers;
- 3) Discussion entailing the proper handling of all EBT transactions.

Informational material provided to employees:

The Supplemental Nutrition Assistance Program Training Guide for Retailers.

POLICY

1. All employees processing EBT transactions are given an initial training session within 2 weeks of employment, and every six months afterwards, and a complete package of the Supplemental Nutrition Assistance Program Training Guide for Retailers as outlined above;

2. Training on the rules and regulations of the Food Stamp Program will occur every 6 months and attendance is mandatory;
3. No violations of the EBT rules and regulations will be permitted;
4. Any employee found to be illegally processing EBT transactions will be immediately terminated.

However, the statements and training session logs provided by the Appellants are not sufficient to demonstrate that J.B. Food Center had established and implemented an effective compliance policy and program prior to the occurrence of the SNAP regulations. The Appellants submitted no evidence to validate that J.B. Food Center had an effective compliance policy and program in place prior to the occurrence of the SNAP violations other than their statement of such. In fact, J.B. Food Center was authorized to participate in the SNAP on December 23, 2003. According to the training session logs, the first training session for store employees occurred on October 14, 2015. As such, there was no compliance policy and program, including employee training on the SNAP rules, implemented at J.B. Food Center until more than 11.5 years after the store was initially authorized for participation in the SNAP.

The Appellants did not provide an employee roster showing dates of hire for each employee (both current and past employees who received training—including any store managers and the store owners), no signatures were provided from each **past employee** acknowledging that they had received training or that a compliance policy was in effect prior to the review period and on which dates they had received the training, etc. The Appellants did not provide FNS with any documentation to validate the employees who had worked at J.B. Food Center, verification on the dates of their employment at the store, verification that the employees listed have been the only employees who have worked at the store since the compliance program was implemented, etc.

It is also important to note that the Appellants indicated in their August 28, 2017 reply to the Charge Letter allegations and in the October 6, 2017 request for administrative review that they hold quarterly training sessions for all store employees on the SNAP rules. However, the dates provided on the training session logs (i.e., October 14, 2015, April 20, 2016, and October 19, 2016) indicate that training sessions are provided to store employees every six months. The training session logs also note that “All employees processing EBT transactions are given an initial training session within two weeks of employment”. As there were no training session logs provided for all past and current store employees, dated within two weeks of their initial employment date, it is evident that this training policy requirement was not in effect at J.B. Food Center.

The Appellants did not provide FNS with any documentation to verify that they had developed and implemented an employee **training manual** prior to the cited SNAP violations. The Appellants did not provide FNS with any documentation/validation that the training materials used to train store employees and store managers on the SNAP rules and regulations clearly stated that the following acts are prohibited and are in violation of the Food and Nutrition Act

and regulations: 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.

The Appellants provided no documentation, other than the signed training logs, that store employees received on-going, periodic training on the SNAP regulations and the proper acceptance and handling of SNAP coupons. In addition, the Appellants did not provide FNS with an **evaluation** of the effectiveness of the firm's compliance policy and program to ensure SNAP compliance and to prevent SNAP violations, as is required by Appellants who are seeking an assessment for a CMP in lieu of permanent SNAP disqualification.

With regards to the signed training session logs provided by the Appellants which purport to establish that they received training on the SNAP rules, that training materials were stored at J.B. Food Center, that store employees received training on the SNAP rules, and that no employee has trafficked SNAP benefits at the subject store, the truth of such declarations can neither be confirmed nor denied. Although such statements may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect store owners/employees/managers to admit, when requesting the imposition of a CMP in lieu of a SNAP disqualification, that there was no compliance policy in place prior to SNAP violations occurring, were it really so. On the contrary, one would expect that any store owner/employee/manager statement provided would attest that there was an effective compliance policy and training program in place prior to SNAP violations occurring at the retail food store in order to qualify for implementation of a CMP in lieu of a permanent SNAP disqualification.

The Appellants did not provide FNS with documentation that validates that they were unaware, nor approved or benefitted from, the unauthorized trafficking by management, employees, or SNAP recipients and/or retail purchases of items of unauthorized items under the SNAP. In determining whether store ownership benefited from trafficking of SNAP benefits in which they were not directly involved, it is generally assumed that if EBT settlements are made to the store owner's account, the store owner had benefited from such transaction. The store employee, manager, or store owner involved in the trafficking transactions took cash out of the store's cash register and the benefits most likely went into the Appellant's bank account. The Appellants did not submit any documentation to contradict this issue. Therefore, based on the lack of **substantial** evidence and information submitted, the Appellants failed to demonstrate that J.B. Food Center had established and implemented an **effective** compliance policy and training program prior to the SNAP violations that occurred during the review period. As such, 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 Appellants' EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable

transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellants' contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against 250 J.B. Food Center, Inc. is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (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, FNS is 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.

LORIE L. CONNEEN
Administrative Review Officer

June 13, 2018