

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

7-Twelve Food Mart,

Appellant,

v.

Case Number: C0204602

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against 7-Twelve Food Mart (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on February 28, 2018.

AUTHORITY

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

CASE CHRONOLOGY

By letter dated January 9, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in May 2017 through October 2017. The letter noted that

the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through a representative, responded to the charges in a letter dated January 19, 2018, that admitted to offering credit and requested a CMP, but contained no evidence to be considered in support of the CMP. Upon receipt of Appellant's response, the Retailer Operations Division requested evidence of credit accounts by letter dated January 25, 2018. During a February 2, 2018, telephone conversation with the Retailer Operations Division, the representative stated the business had stopped offering credit on or about January 12, 2018, and had no other evidence than the six affidavits submitted in the original response. The Retailer Operations Division notified Appellant by letter dated February 28, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated March 5, 2018, Appellant, through a representative, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

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

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of

evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(e)(1)(i) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined in part as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. Trafficking includes “Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food”.

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

7 CFR §278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

7 CFR §278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of May 2017 through October 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

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

APPELLANT'S CONTENTIONS

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

- The store owner is of Indian descent and Punjabi is his primary language. He does speak some English and has tried, but was unable to obtain an attorney on such short notice and has turned to Merchant Services Washington, Inc. as his representative;
- The owner acknowledges that the transactions in the first Attachment occurred, but they were for credit accounts, not trafficking. The multiple transactions are when a customer comes in during the first or second week of the month to pay their balance and then makes a second purchase. He was not aware that credit violated SNAP regulations until he received the charge letter. He stopped extending credit after being told to by his representative on or about January 12, 2018. The owner admits to extending credit and promises to never do so again;
- The unusually large charges are relative. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Cases of Rockstar energy drink regularly priced at \$2.39/ can were sold in 2017 for \$34.99 for a 24 can case – a savings of \$21.37. Chicken breasts are also a hot selling item. The owner buys them by the case, repackages them, and sells a lot of them for \$7.99 and \$15.99 each. Finally, the owner sells 25 and 50 pound bags of rice and flour for \$25.00 and \$50.00 respectively. 5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- There is no evidence that trafficking occurred. There are no witnesses, no confidential informants, no cardholder complaints, nothing! The allegations are not supported by facts nor do they rise to the level set forth by USDA-FNS criteria and guidelines related to trafficking. The USDA-FNS has the names, addresses, and phone numbers of all cardholders and they will confirm that they received credit. There was no trafficking – just an ill-trained, ill-informed retailer who unknowingly and unwittingly violated a SNAP rule. There are attached affidavits from customers confirming credit. It appears USDA-FNS rushed to judgment based solely on a computer algorithm. The owner requests the charge be reduced to a program violation and a CMP be imposed rather than any suspension or disqualification;
- The owner and his family spent their life savings of over 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to purchase the business and would never commit trafficking or knowingly violate SNAP regulations. The USDA-FNS provided a handbook and DVD until April 2014 outlining the rules and regulations to all retailers. They stopped doing this just before this retailer received his license so he received no training whatsoever. Additionally, the owner hired Northern Payment Systems, Inc., a USDA

approved third party processor to provide comprehensive training to the owner and all employees on SNAP rules and regulations;

- The US annotated code and recent rulings by multiple US District Courts have ruled that USDA-FNS must prove beyond a reasonable doubt and there must be a preponderance of evidence to support a charge of trafficking. The USDA-FNS have not met the burden of proof required by law or shown beyond a reasonable doubt that any trafficking occurred. The charges are faceless, bogus, and without proof or merit. No tangible or intangible proof or evidence exists - no witnesses, no confidential informants, no cardholders, no government witnesses, no audio/video recordings, no photos, nothing but a generic computerized printout of approximately 18 homeless people who asked and received a small amount of credit, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The USDA-FNS agent rushed to judgment without regard to the rule of law and without regard to the doctrine of fairness. The owner readily admits to extending credit and requested a CMP for his mistakes. He has also paid for and received training by a USDA Third Party Processor on USDA rules, regulations, and common merchant mistakes; and,
- No one in America should have to suffer a bogus, felonious conviction based on a flawed computer printout without evidence. One is presumed innocent until proven guilty. This case is a miscarriage of justice and the trafficking charge should be dismissed forthwith.

Appellant submitted six pre-printed form letter affidavits from customers attesting to receiving credit; three photographs of store inventory showing Rockstar and bags of rice; a September 2015 invoice for Rockstar; three 2017 invoices for flour, rice, and chicken; a copy of a Third Party Processor list provided to retailers by FNS; a January 17, 2018, letter from Northern Payment Systems, Inc. stating that it had been contracted to provide three hours of comprehensive training on SNAP retailer rules on January 25, 2018; and a letter dated March 5, 2017, signed by Appellant's representative stating that training on SNAP retailer rules and regulations was conducted in three one-hour sessions from January 20, 2018, through February 14, 2018, in support of these contentions.

ANALYSIS AND FINDINGS

Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant business during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS authorized the business as a convenience store on October 28, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 1, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The business was large gas station convenience store offering a limited quantity and variety of staple foods and carrying no unique items, ethnic foods, or offering any distinctive services.
- It is noted that the business was deficient in the dairy category of required staple foods stocking only milk products and single serving ice cream.
- There were no shopping carts and only one small handheld basket for customer use making it difficult for customers to carry large amounts of food to the checkout area.
- The checkout area consisted of a small counter area approximately 1.0 foot wide by 1.5 feet deep crowded with displays on both sides and the PIN pad thereby severely limiting available counter space for customers to place their purchases. The very small size of the checkout area would make it problematic to process large orders.
- The checkout had a cash register, POS terminal, and optical scanner as confirmed by a store employee. There was a separate cash register for restaurant sales.
- There was a sizeable commercial kitchen/food prep area and many tables with chairs for dine-in customers. There were large menu boards advertising a wide variety of hot/cold prepared foods, sides, and salads available 24 hours a day per signs. The store had two restaurants: **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** offering Indian foods including many chicken options, vegetable dishes, Tandoori foods, rice, lamb, goat, etc. and a seafood restaurant called Skippers offering family meals, chowders, chili, many seafood baskets, chicken, fish, shrimp, clams, fries, hush puppies, etc. Per a store employee, store staple food stock was not are being used in the preparation of the hot/cold, ready-to-eat prepared foods. Large commercial sized bags of AP flour, onions, and potatoes were visible in the kitchen as were two boxes of parboiled rice stored in a corner. Another photograph showed a large upright freezer located in the kitchen that contained a variety of frozen foods. No large bags of rice were visible either in the kitchen area or in the retail store area.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale except for five cases of bottled water

next to the checkout.

- The store visit report notes that the business was not a specialty store. The business had a limited stock of staple foods that also included numerous single serving and pre-packaged items with a significant portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, single serving foods, and many ineligible items.
- The business had no fresh or frozen unprocessed meats/seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/poultry/fish, processed chicken/pork, and jerky), no deli meats, no sausages, no bacon, no hot dogs, no packaged lunch meats, a minimal selection of frozen entrees/frozen dinners, no fresh fruit except for three apples and one lemon at the checkout, no fresh vegetables, no frozen fruit, no frozen vegetables except for three bags of collard greens, a minimal selection of single serving nuts, a limited stock of canned soups, a very limited quantity and variety of canned and packaged staple food items, no pancake mixes, no mac&cheese, only a few small bags/boxes of rice/flour, no corn meal, no hot cereals other than single serving sizes, no sliced bread/rolls, no deli cheeses, no packaged cheeses, no butter, no margarine, no yogurt, no sour cream, no baby foods/cereals or infant formula, and very few expensive eligible food items.
- Ineligible items included: tobacco, tobacco accessories, gasoline, alcohol, lottery, hot ready-to-eat foods, hot drinks, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, charcoal, sunglasses, newspapers, candles, and jewelry while accessory foods included: candy, condiments, spices, cooking oil, sugar, coffee, tea, cocoa, and un/carbonated drinks.
- Signage was in English and no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) were visible in the store.
- The business's hours of operation were open 24/7 as confirmed by a store employee.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items priced differently such as snacks and drinks priced at \$2.00 and two for \$3.33. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive items costing more than \$5.00 for sale in the store as being a 27.5 ounce box of frozen pizza priced at \$6.99, a 28 ounce box of frozen processed chicken priced at \$6.99, a 32 ounce jar of fruit priced at \$5.95, and a seven ounce jar of coffee priced at \$9.95. This listing of the most expensive items was provided by a store employee during the store visit.
- The business was not a WIC vendor and did not stock any baby foods or infant formula.
- The quantity and variety of the store's staple food inventory was noticeably less than that seen during the previous store visit on October 24, 2015.

Multiple transactions in unusually short time frames

This Attachment documents 41 individual transactions in 18 sets of two or more transactions conducted by 13 different households in a short period of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of five individual transactions, two sets are comprised of three individual transactions, and the remaining 15 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions were for credit accounts, not trafficking, and submitted six pre-printed form letters from customers attesting to receiving credit. The multiple transactions are when a customer comes in during the first or second week of the month to pay their balance and then makes a second purchase. The owner was not aware that credit violated SNAP regulations until he received the charge letter. He stopped extending credit after being told to by his representative on or about January 12, 2018. The owner admits to extending credit and promises to never do so again.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As discussed later in this decision, the form letters do not provide convincing evidence that credit accounts existed.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in 15 of the 18 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant business during the period under review.

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

High Dollar Value Transactions

This Attachment lists 111 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a convenience store offering a limited stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$7.75 for this store type in King County. The 111 excessively large SNAP EBT transactions at Appellant's business for the review months represents more than 38.3 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

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

The difference in the average SNAP transaction dollar amount, the average SNAP transaction count, and the total SNAP transaction dollar volume for King County convenience stores during the review months and at the Appellant business is significant. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. A comparison by the Retailer Operations Division of Appellant's SNAP redemptions to that of nearby convenience stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do

not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

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

Appellant contends the unusually large charges are relative.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Cases of Rockstar energy drink regularly priced at \$2.39 per can were sold in 2017 for \$34.99 for a 24 can case – a savings of \$21.37. Chicken breasts are also a hot selling item. The owner buys them by the case, repackages them, and sells a lot of them for \$7.99 and \$15.99 each. Finally, the owner sells 25 and 50 pound bags of rice and flour for \$25.00 and \$50.00 respectively. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant submitted three photographs of store inventory showing cases of Rockstar and bags of rice as well as a 2015 invoice for Rockstar and three 2017 invoices for flour, rice, and chicken.

While households residing in areas with extremely limited grocery store options may conduct high dollar value transactions at convenience stores out of necessity, this is not the case when households have better alternatives. FNS records show there are two super stores and five medium grocery stores located within one mile of Appellant's location that offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked convenience store that offers no fresh or frozen unprocessed meats or seafood and has virtually no fresh or frozen fruits and vegetables. While the two super stores are located 0.5 and 0.99 miles away from Appellant's location, there is a medium grocery store located only 0.03 miles or 53 yards away and a second medium grocery store located 229 yards away. The Appellant business is located on SE 256 Street near the intersection of 104th Avenue SE, both of which have scheduled fixed route bus service that would facilitate shopping at other stores.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation

limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on September 1, 2017, shows that the Appellant business offers a limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, beverages, and single serving foods as well as many ineligible items. Since the Appellant business offers no fresh or frozen unprocessed meats/seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/poultry/fish, processed chicken/pork, and jerky), no deli meats, no sausages, no bacon, no hot dogs, no packaged lunch meats, a minimal selection of frozen entrees/frozen dinners, no fresh fruit except for three apples and one lemon at the checkout, no fresh vegetables, no frozen fruit, no frozen vegetables except for three bags of collard greens, a minimal selection of single serving nuts, a limited stock of canned soups, a very limited quantity and variety of canned and packaged staple food items, no pancake mixes, no mac&cheese, only a few small bags/boxes of rice/flour, no corn meal, no hot cereals other than single serving sizes, no sliced bread/rolls, no deli cheeses, no packaged cheeses, no butter, no margarine, no yogurt, no sour cream, no baby foods/cereals or infant formula, and has few expensive staple food items, these patterns are deemed to be suspicious. The fact that tobacco, tobacco accessories, gasoline, alcohol, lottery, hot ready-to-eat foods, hot drinks, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, charcoal, sunglasses, newspapers, candles, and jewelry are not eligible for purchase with SNAP benefits also provides no justification for the large transaction amounts.

Specifically, the store visit report does not show any cases of energy drinks, Rockstar or otherwise; no fresh chicken; and no large bags of rice and flour available for purchase. The store visit photographs do show large commercial sized bags of all-purpose flour, onions, and potatoes in the kitchen area and two large boxes of parboiled rice stored in a corner. The fact that no bulk sizes of staple foods were available for purchase is further supported by the listing provided by a store employee of food items costing more than \$5.00. This listing is cited earlier in this decision and lists the most expensive item as a jar of coffee priced at under \$10.00. Based on this incontrovertible evidence, it is more likely than not that the three photographs submitted by Appellant were staged after the fact in an attempt to explain the suspicious high dollar value transactions. The 2015 invoice for Rockstar shows a purchase made months before the start of the review period and therefore is without merit. The remaining invoices are more likely to have been purchases for the two restaurants that are a part of the Appellant business as chicken, flour, and rice are all used for the hot food items listed on the large menu boards.

Increasing food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a

convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully- stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. The Appellant business has a small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant business decreased following receipt of the charge letter on January 10, 2018. The average SNAP transaction dollar amount decreased 29.37 percent from December 2017 to February 2018 while the volume of SNAP redemptions decreased 30.05 percent. A pronounced decrease in SNAP redemptions following receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

Credit Contentions

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f), because the owner was not aware of this prohibition when the transactions occurred.

While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the owner is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When the owner signed the certification page of the online SNAP retailer application to begin operating as a SNAP retailer, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He agreed to accept responsibility for SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically cites violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or

disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP regulations and rules. The certification page also stated that store ownership would receive SNAP training materials upon authorization and that he must contact FNS if he did not receive the materials. The owner never contacted FNS. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon initial authorization, are also available on the same web site used by the owner to submit the online SNAP retailer application. Both the guide and video cite credit accounts as violating SNAP regulations. FNS also conducted an undercover investigation of the Appellant business in 2016 that found no violations. Logic dictates it is very unlikely that employees, who allegedly had received no SNAP training and were therefore completely unaware of what constituted a violation, would be able to avoid making any violations thus indicating that they likely had reviewed these materials.

The owner's admission to extending credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4). It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. 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. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In support of the admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted six pre-printed form letters from customers admitting to receiving credit and including the last four digits of their EBT card. Appellant further stated that no additional documentation of credit is available since the business stopped allowing credit.

Appellant's credit letters do not provide a detailed or itemized breakdown of what food items were purchased, when they were purchased, how many purchases were made during the month, or the dates and dollar amounts of credit purchases or payments. A review of the six letters by the Retailer Operations Division shows that two of the EBT numbers provided do not appear on either of the charge letter Attachments. The Washington State EBT database identified a different EBT card number for both households, but the new number also showed no suspicious transactions at the Appellant business. An analysis of the SNAP shopping patterns for the households associated with the remaining four letters did not show evidence consistent with credit accounts. Accordingly, the documents offered by

Appellant do not provide substantial evidence that the store permitted credit accounts during the review period. Since Appellant was unable to account for any of the transactions outlined in the charge letter as being due to credit, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

Other Contentions

The store owner's country of origin and primary language are not relevant. Many SNAP retailers have emigrated from other countries and for many English is not their primary language. The owner made no mention of having difficulty communicating in English. Had he done so, FNS has interpreter services available.

As previously stated, in an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

The owner and the business were charged with trafficking based on a computer analysis of the store's transactions for the months of May 2017 through October 2017. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

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

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

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

The evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store." In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when

trafficking is involved and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

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

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant requested the charges be reduced to a program violation and a CMP be imposed rather than any suspension or disqualification. Appellant did not request a trafficking CMP in lieu of a disqualification nor did it make any mention of how the business met any of the four criteria needed to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. No documentation or other evidence was received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP required by 7 CFR §278.6(i). While Appellant contracted for retail merchant training on SNAP rules for the owner and employees, this training was not conducted until months after the review period.

CONCLUSION

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

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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

ROBERT T. DEEGAN
Administrative Review Officer

June 11, 2018