

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

A & A Grocery Store Corp,

Appellant,

v.

Case Number: C0209281

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from January 2018 through March 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized A & A Grocery Store Corp. for SNAP participation as a small grocery store on July 14, 2015. In a letter dated June 19, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of January 2018 and March 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated July 2, 2018, the Appellant, through counsel, responded to the trafficking charges by stating that the firm's owner was not aware of any violations of SNAP committed by her or any employees of the firm. The Appellant also requested consideration of a CMP in lieu of permanent disqualification and described in detail the training efforts made by the firm to ensure that all employees comply with SNAP regulations. The firm's training program includes an initial training of each new hire followed by refresher training on a regular basis. Additionally, the Appellant stated that the firm has a number of video cameras in the store, which serve as a deterrent for any employee who might consider noncompliance with store policies and procedures or procedures related to the use of SNAP benefits. Finally, the Appellant stated that A & A Grocery Store Corp. is owned and operated by good people who do not break laws or SNAP regulations because they understand the importance of SNAP for their business and the community and because they have great respect for the laws of the nation.

In support of its request for a civil money penalty, the Appellant submitted training logs for five employees and a copy of the *SNAP Training Guide for Retailers* in both English and Spanish.

Case records indicate that on June 29, 2018, the Appellant submitted a request for case file information in accordance with the Freedom of Information Act (FOIA). This request was filed directly with the agency FOIA office. On July 26, 2018, the agency completed its FOIA response and provided the Appellant with 114 pages of responsive documents.

On October 29, 2018, the Retailer Operations Division sent Appellant's counsel a letter, giving the firm 10 days to provide any additional information, explanation, or evidence related to the charges of trafficking. In a letter dated November 5, 2018, the Appellant submitted specific explanations pertaining to the transactions listed in the charge letter. The Appellant disputed the allegations of trafficking and claimed that multiple transactions within a short time period could be due to the shopping habits of the surrounding neighborhood, where multigenerational families live at the same address. In these circumstances, various household members using the same card have different shopping patterns. Additionally, the Appellant claimed that SNAP households may allow a third party to use their EBT card. This could be friends or other family members, or it could be a case where card holders sell their card to strangers in exchange for cash or drugs. This is all done without the knowledge of A & A Grocery Store Corp. According to the Appellant, the firm has no system in place to monitor SNAP activity for multiple purchases, and argued that such a requirement does not exist under USDA regulations.

As for the “excessively large transactions,” the Appellant argued that the firm is more than just a corner store. It is a small supermarket and deli and some customers do all of their grocery shopping there. The nearest competitor, located two blocks away, recently closed, which may account for higher than normal sales at A & A Grocery Store Corp. Additionally, some customers purchase cases of food, such as juice, water, cereal, etc. These are expensive and explain why some transactions might be considered “excessively large.” Further, food costs in Philadelphia have never been so high. To support this claim, the Appellant submitted a copy of a USDA report entitled, “Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average, February 2017.” The Appellant contended that for FNS to classify a purchase **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** as “excessively large,” when that amount is less than the cost of a week’s worth of food for an adult seems patently unfair.

In support of its explanation, the Appellant submitted 296 inventory receipts “to document the significant amount of provisions that are carried and used by A & A Grocery in carrying out their daily business.” The Appellant also submitted 39 undated color photographs of the store and food inventory.

After reviewing the Appellant’s responses and documentation and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated December 4, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant’s eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the regulations, but determined that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked December 14, 2018, the Appellant, through counsel, appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular,

7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

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

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

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under

paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

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

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

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

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

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

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

APPELLANT'S CONTENTIONS

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

- The Appellant's correspondence in its request for review serves to supplement the materials already provided to the Retailer Operations Division during its initial response to the charges.

- The Appellant submitted sufficient documentation to establish that it had a comprehensive training program that met or exceeded the standards found in Section 278 of the SNAP regulations prior to the date of the alleged violations.
- The training program also met or exceeded the SNAP training expectations as outlined in the bulletin to retailers [found on the FNS public website].
- The firm should be availed of a CMP as a result of its training program's compliance with established regulations.
- In its initial response to the charges, the Appellant provided training logs from its employee personnel files. As a supplement to these logs, Appellant submits additional materials from employee personnel files to corroborate the extent to which the Appellant operated its business in compliance with USDA requirements.

In support of its contentions, the Appellant submitted a copy of the FNS training bulletin referenced above, and copies of employee documents, "Control de Empleados," for five separate employees. These documents list the employees' names, dates of employment, and notations regarding training activities, and appear to correspond to the training logs submitted earlier.

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

ANALYSIS AND FINDINGS

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

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained during a February 10, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- A & A Grocery Store Corp. is a small grocery store, approximately 600 square feet in size, operating in the city of Philadelphia, Philadelphia County, Pennsylvania.
- At the time of the contractor's visit, the firm did not have any shopping carts or hand-held shopping baskets for customer use, which is not unusual for stores of this size. Customers shopping in such stores generally purchase only as much food as they can carry in their arms.

- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- It appears that the firm does not use optical scanners to process transactions.
- The checkout area consists of an unusually small countertop (perhaps 12 inches by 12 inches) where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than two or three small items at a time and little room for customers to maneuver with large amounts of groceries. Additionally, in order to reach the checkout area, a customer must reach across a slide-top freezer unit on the floor in front of the cash register. It is noted that the cashier is situated behind a Plexiglas barrier which is filled with candy and other items.
- The store's staple food stock is sufficient in each of the four staple food categories. The food selection is typical of a small grocery store or corner market. There is no evidence that the firm sells large, expensive food items, such as meat bundles, fruit or vegetable boxes, or cases of food or drink. The closest thing to bulk sales is a sign in the store advertising three boxes of cereal for \$9.99.
- The store also has a kitchen area where a large amount of hot and cold made-to-order food items are prepared. Such items include burgers, sandwiches, chicken wings, French fries, onion rings, hot breakfast foods, etc. The store also sells deli meat and cheese by the pound.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, cleaning supplies, and other miscellaneous household merchandise.
- There is no indication from the store visit report that the firm has a special pricing structure. From all indications, the prices of most SNAP-eligible products end in 9.
- The most expensive food items for sale at the store include cans of Similac infant formula for \$17.99 or \$18.49 each. It should be noted that the vast majority of SNAP households that contain infants and children under the age of five also participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). It is uncommon for such households to purchase expensive cans of infant formula with their SNAP benefits; rather, they normally use WIC vouchers to make such purchases.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small grocery store or corner market, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit A & A Grocery Store Corp. to purchase very large quantities of groceries, especially considering the absence of shopping carts and baskets and the availability of much larger SNAP-authorized stores in the area, including four supermarkets and a superstore all located within a mile of the firm. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 11 sets of transactions (24 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small grocery store like A & A Grocery Store Corp., which has no shopping carts or baskets and a very constricted checkout area. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is difficult for this review to comprehend what was available at A & A Grocery Store Corp. that would not have been available at a substantially larger supermarket just a short time earlier, especially one with shopping carts to help transport a large amount of merchandise.

Considering the amount of food it would take to add up to these transaction totals and considering the availability of much larger stores in the area, it seems very unlikely that SNAP customers would repeatedly visit a small grocery store to make such large purchases. Such transactions are highly unusual and are strongly suggestive of trafficking. Attachment 1 is littered with similar examples. It is noted that three comparable small grocery stores located within one-third of a mile of A & A Grocery Store Corp. had only one such transaction set despite conducting, in some cases, many more transactions during the review period. See chart below:

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

It is presumed that many of the same external factors, such as multigenerational families at the same address or the illegal selling of EBT cards to a third party, would impact the nearby comparable stores much the same as A & A Grocery Store Corp. If customer behavior in the area where the Appellant store is located was typical of the community, then it stands to reason that nearby stores would have very similar SNAP transaction patterns. But that is simply not the case.

The Appellant has argued that the firm does not have a system in place to monitor which cards are being used for multiple purchases, and contends that such a requirement does not currently exist under USDA regulations.

With regard to this contention, this review acknowledges that SNAP regulations do not provide limitations on the number of transactions that can be made by SNAP households or how large the individual transactions can be. However, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics and in comparison with similar stores in the area. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so. This review does not contend that the EBT transactions detailed in the charge letter are overtly suspicious when they occur on an occasional or intermittent basis. But when such transactions form repetitive and questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

It must be noted that the Appellant has offered no relevant evidence, such as itemized cash register receipts, to prove that the questionable transactions were legitimate purchases of eligible food. Anecdotal explanations without supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate. Because the Appellant has offered little information beyond conjecture, it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 50 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with other small grocery stores in the state of Pennsylvania. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in Pennsylvania was \$9.92. In Philadelphia County, the average was even lower, at \$9.00 per transaction. The average transaction in Attachment 2 is more than five times larger than the average purchase amount for this store type.

Given that the Appellant firm has a moderate inventory of staple foods and other SNAP-eligible items, it is probable that there would be an occasional purchase where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of shopping carts and baskets and the severely constricted checkout area. The substantial number of high-dollar transactions in a three-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many food items it would typically take to add up **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, and considering that the store does not have any shopping carts or shopping baskets, and given the fact that there are much larger grocery stores in the area with substantially greater inventory and variety, this review finds it unlikely that SNAP households would legitimately choose to spend large portions of their benefit allotments at a small store such as A & A Grocery Store Corp.

As with Attachment 1, the Appellant firm had more suspicious transactions in Attachment 2 than the three nearest small grocery stores combined (see chart below). It should be noted that just like the Appellant store, none of the comparison stores below had shopping carts or baskets for customer use. In such stores, very large transactions are normally rare occurrences.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and **5 U.S.C. § 552 (b)(7)(E)**

As with the transactions in Attachment 1, it is presumed that similar external factors would impact the comparable stores much the same as A & A Grocery Store Corp. According to the Appellant, these factors include reliance on public transportation which limits customers to shopping at A & A Grocery rather than larger supermarkets, and the high cost of food. Assuming these factors affect other nearby small stores as well, why would the Appellant store have so many more large

transactions than other corner markets with similar, or even greater inventory? Unfortunately, the Appellant's contentions and evidence do not answer this question.

As noted earlier, the Appellant submitted to the Retailer Operations Division almost 300 inventory invoices and 39 photographs of the store. While this documentation is useful to show that the firm had sufficient inventory to cover the SNAP transactions during the review period, invoices and photographs alone do not identify what occurred during each of the specific transactions listed in the charge letter.

Without some kind of evidence, such as itemized cash register receipts, this review has no way of determining whether or not the transactions in Attachment 2 were legitimate purchases of eligible food. The transactions in this attachment are sufficiently unusual to warrant further explanation and corroborating evidence. Without such documentation, this review has little option but to conclude that the transactions listed in this attachment were likely the result of trafficking.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. If viewed in a vacuum, the transactions themselves may not seem particularly unusual. However, they are substantially different when compared with similar stores in the area and are markedly different than normal shopping patterns of SNAP households. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant has not offered persuasive evidence and its anecdotal contentions do not sufficiently address the specific transactions listed in the charge letter. Therefore, it is the conclusion of this review that the transactions in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Civil Money Penalty

The Appellant believes that it has submitted sufficient documentation to establish that it meets the criteria for a trafficking civil money penalty as outlined in 7 CFR § 278.6(i). In demonstrating that it has met these criteria, the Appellant submitted to the Retailer Operations Division training logs for five employees and a copy of the *SNAP Training Guide for Retailers* in both English and Spanish. The training logs list the name of the employees, date of initial training, dates of refresher trainings and the following statement: "Have received and understand the SNAP/EBT training listed above and acknowledge to maintain employment current with the rules and regulations according to the USDA."

It is noted that the Appellant's request for a CMP as well its submission of documentation in support of its request was made within appropriate timeframes in accordance with 7 CFR § 278.6(b)(2).

The primary issue regarding the imposition of a civil money penalty in lieu of permanent disqualification for trafficking is whether or not the Appellant meets each of the four established eligibility criteria for this alternative penalty (see page 6 of this document for a listing of the four criteria). These criteria must be met in order for a firm to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with 7 CFR § 278.6(i), fulfillment of each of the four criteria must be established by “substantial evidence.” Standards of evidence in this regard are found in 7 CFR § 278.6(i)(1) and (2). According to the case record, the Retailer Operations Division determined that the Appellant met Criteria 3 and 4 of § 278.6(i), but failed to meet Criteria 1 and 2.

Criterion 3

In order to meet Criterion 3, a firm must demonstrate that it had developed and instituted an effective personnel training program. Regulation at 7 CFR 278.6(i)(2) indicates that evidence of an effective program will include documented training activities, including dated training curricula and records showing the dates that training sessions were conducted. The firm must also provide a record of dates of employment of firm personnel, and documentation that violating employee(s) participated in initial training (within 30 days of employment) and follow-up trainings held prior to the current violations.

In its initial response to the charge letter, the Appellant indicated that newly hired employees were given one-on-one training in SNAP procedures by the firm’s senior management. The Appellant further indicated that refresher training occurred on a regular basis. The employee training logs appear to corroborate these claims, as they show the dates of initial training as well as follow-up training dates. For two of the employees, it is unusual that their initial training sessions occurred two months before A & A Grocery Store Corp. was authorized to participate in SNAP, but there is no evidence that this fact was concerning to the Retailer Operations Division. There is no clear evidence as to precisely the materials that were covered during the training sessions, but the Appellant indicated in its narrative that the *SNAP Training Guide for Retailers* was reviewed page-by-page and that a SNAP training video was viewed online at the USDA website. The Retailer Operations Division appears to have been satisfied with this explanation.

Based on the above, the Retailer Operations Division determined that the firm had satisfied the elements of Criterion 3. This review agrees.

Criterion 4

Regarding Criterion 4, the Appellant stated that the firm’s owner was “wholly unaware of any violation of SNAP regulations perpetrated by her or an employee of her organization.” Based on the firm’s training activities and its explanation in its response to the charge letter, the Retailer Operations Division determined that there was little evidence to suggest that the Appellant owner was aware of or involved in trafficking violations in any way.

While the Appellant’s evidence regarding Criterion 4 is clearly lacking in substance, this review has received no evidence from the Retailer Operations Division that the firm’s owners were involved in or benefitted from the violations in any respect. Therefore, this review acknowledges that the Appellant likely meets Criterion 4.

Criteria 1 and 2

With regard to Criterion 1, regulation states that in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with current SNAP regulations and policy on the proper acceptance and handling of SNAP benefits (see 7 CFR § 278.6(i)(1)).

As for Criterion 2, the regulation indicates that a firm's policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of program violations. Additionally, the regulation states that in evaluating the effectiveness of the firm's policy, FNS may consider the following:

- Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating SNAP regulations;
- Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of SNAP violations or irregularities committed by firm personnel;
- Documentation of the development and/or continued operation of procedures for internal review of firm employees' compliance with SNAP regulations.

Unfortunately, the Appellant offered almost no evidence of specific firm policy related to the proper acceptance and handling of SNAP benefits and there is no clear evidence that the firm's written policy, if it exists, was in operation prior to the occurrence of program violations. The submission of the *SNAP Training Guide*, while informative, is publicly available online for all retailers and offers little insight into A & A Grocery's specific store policies. While SNAP training appears to have occurred fairly regularly, and while the training log alludes to the fact that a person's employment could be affected by his or her understanding of SNAP rules and regulations, there is plainly a deficiency in the store's written policy with respect to Criteria 1 and 2. It should be made clear that in the description of the four CMP criteria, the regulations draw a distinction between a store's policy and its training program. In order to be eligible for a trafficking CMP, a firm must show that both a policy and a training program were in operation prior to the commission of the violations.

As noted earlier, fulfillment of each of the four criteria in 7 CFR § 278.6(i) must be established by "substantial evidence." Because the firm has failed to offer sufficient evidence of written store policy, and because the transactions listed in Attachments 1 and 2 of the charge letter are sufficiently unusual and likely the result of trafficking, this review concludes that the firm's policy was either nonexistent or ineffective to prevent program violations. Accordingly, this review agrees with the Retailer Operations Division that the Appellant does not satisfy the requirements of Criteria 1 and 2.

This review acknowledges that the standard of evidence needed in order to be found eligible for a civil money penalty in lieu of permanent disqualification for trafficking is difficult to meet. Nevertheless, it is the standard required by the regulations and the standard to which the Appellant is held during the course of this review. While significant effort may be required to

develop and maintain a compliance policy and training program, if a firm fails to meet the minimum requirements as required by regulation, this review has no alternative but to conclude that the firm is not eligible for a CMP. Lastly, it should be noted that the CMP criteria as stated in 7 CFR § 278.6(i) are clearly *minimum* standards, below which eligibility is precluded. Accordingly, it is the determination of this review that the Retailer Operations Division correctly determined that Appellant did not qualify for a civil money penalty in lieu of permanent disqualification.

As for the additional training documentation that was provided by the Appellant in its request for administrative review, this evidence was not considered by the review officer. Regulations clearly state that along with its request for consideration of a CMP in lieu of permanent disqualification for trafficking, a firm must submit documentation and evidence of its eligibility for a CMP within 10 days of receipt of the charge letter. Documentation provided after that 10-day period cannot be considered.

CONCLUSION

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

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

RIGHTS AND REMEDIES

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

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

JON YORGASON
Administrative Review Officer

March 5, 2019