

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

**Adeline Grocery, Inc,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0213484**

**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 the permanent disqualification of Adeline Grocery, Inc. (Adeline Grocery or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

**ISSUE**

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

**AUTHORITY**

7 USC § 2021 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

In a letter dated December 3, 2018, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2018 through September 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that 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 replied to the charges by letter dated December 7, 2018. Appellant denied the allegations and explained that the transactions were for eligible food items only. After considering the retailer's reply and the evidence, the Retailer Operations Division issued a determination letter dated July 11, 2019. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

By letter postmarked July 23, 2019, Appellant, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review. Appellant requested documents under the Freedom of Information Act (FOIA) on July 11, 2019. FNS responded to the FOIA request on August 29, 2019. Counsel provided documents in support of its administrative review request on September 27, 2019.

### **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, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) 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 USC § 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 § 271.2 states that the definition of "coupon" includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 271.2 states, in part, that, 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 § 271.2 defines trafficking, in part, as:

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(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**, . . .” (emphasis added)

7 CFR § 278.6(e)(1) reads, in part:

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

7 CFR § 278.6(i) states, inter alia:

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

7 CFR § 278.6(b)(2) states, in part:

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

**within the 10 days** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

### SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from April 2018 through September 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were multiple transactions made from one or more SNAP households within a short timeframe.
- There were multiple transactions made from individual benefit accounts within a set time period.
- There were excessively large purchase transactions made from recipient accounts.

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

### APPELLANT'S CONTENTIONS

In its July 23, 2019, administrative review request, and subsequent information submitted on September 27, 2019, Appellant provided the following summarized contentions:

- Appellant denies that any trafficking of SNAP benefits occurred.
- The charges are not based on any direct evidence but rather based on circumstantial evidence.
- Appellant requested documents under FOIA and FNS redacted or withheld more than 90% of the record, including the EBT case analysis and SNAP household information.
- Appellant requests that the initial determination be stayed and that Appellant be permitted to resume participation in SNAP pending FNS's production of all relevant records.
- Appellant is a well-stocked medium grocery store that was authorized on August 8, 2014.
- The Retailer Operations Division incorrectly characterizes Appellant as a convenience store.
- On average, more than 65% of Appellant's sales are for eligible food items.
- Appellant contains more than 3,000 square feet of retail space, including a large walk-in cooler and it also has a large storage area that exceed 1,000 square feet.
- Appellant typically sold 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP-eligible items monthly.
- Appellant sells hundreds of different eligible food products, including a variety of fresh fruits and vegetables.

- Appellant also sells dozens of staple foods, including bread, milk, cheese, butter, meat, seafood, cereals, pasta, rice, canned fruits and vegetables, fruit juice, eggs, meat, infant formula, and infant food.
- Only two other SNAP retailers are located under one mile from Adeline Grocery; both are much smaller retailers and carry predominantly Middle Eastern food.
- None of those other stores are as large or carry as wide a selection as Adeline Grocery.
- Prices at Adeline Grocery are also generally lower than other SNAP retailers.
- Several housing projects and apartments largely inhabited by people without cars are within a few blocks.
- Prior to May 2019, more than 30% of Appellant's gross revenue was derived from its SNAP participation.
- SNAP customers will be forced to purchase staples at higher prices from other SNAP retailer that sell staple food items.
- At no time prior to December 3, 2018, was Appellant charged with any program violations.
- It is not a violation of any SNAP regulations for beneficiaries to shop at a location multiple times daily or to redeem all of their monthly benefits at one time.
- The transactions that were made too quickly to be credible took place infrequently when considering that Appellant engaged in nearly 10,000 EBT transactions during the review period.
- The quick transactions were likely always the result of purchases made on different registers and processed on the store's one EBT terminal in quick succession.
- With respect to the claim that the transactions were "made from the accounts of individual SNAP households within a set period of time," none of these transactions took place 5 U.S.C. § 552 (b)(6) & (b)(7)(C), ample time for the customer to go home and return.
- The volume of goods sold by Appellant strongly supports the propriety and legitimacy of these transactions.
- Adeline Grocery gross receipts during 2017 exceeded 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and increased by more than 20% to more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during 2018.
- Adeline Grocery purchased and sold, on average, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in goods per month.
- It is certainly not unreasonable for customers to stop at a food store more than one time per day, especially if items are forgotten or if they are too heavy to carry home and the beneficiary does not have a car.
- The allegedly high dollar value transactions are routine and unexceptional given that Appellant is a grocery store and is not a convenience store.
- Even those are not suspicious or unusual given that Appellant has two registers, does not utilize an integrated POS system, and totals customer purchases independently of processing SNAP transactions.
- Since many customers do not have cars and cannot carry all of the goods at one time that each may want to purchase that day.
- Only 104 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (or approximately 9 per month).

- FNS’s failure to disclose the identity of the SNAP beneficiaries involved with these transactions has prevented Appellant from contacting them and procuring declarations supporting the legitimacy of each and every alleged violation.
- Appellant requests a warning.

In support of its contentions, Appellant provided the following documents in support of its review request:

- FNS Determination letter;
- FNS Charge letter;
- Appellant’s FOIA request;
- FNS FOIA response;
- FNS Case Analysis Document;
- Owner’s Affidavit;
- Appellant’s 2017 and 2018 Tax Return; and
- Customer statements.

The preceding may represent only a brief summary of the Appellant’s contentions presented 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.

## **ANALYSIS AND FINDINGS**

### **Store Visit**

FNS authorized Adeline Grocery as a convenience store on August 8, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 23, 2018, 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 firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Adeline Grocery is approximately 1900 square feet with no additional storage outside of public view.
- There was one checkout space with two cash registers and one point-of-sale device.
- There were some shopping baskets and no shopping carts for customer use.
- There were some packages of bacon, kielbasa, deli meat, and one package of ground beef, and one package of bbq pork ribs.
- Fresh produce included onions, potatoes, peppers, cucumbers, lettuce, tomatoes, lemons, limes, bananas, and kale.
- Frozen food included ice cream and some individual sized Hot Pockets.
- Dairy included milk, cheese, butter, cream cheese, yogurt, and sour cream.

- Other staple foods available for purchase were eggs, juice, rice, bread, beans, cereal, pasta, and a limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included alcohol, health and beauty products, cleaning products, automotive supplies, pet food, and paper products.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The highest priced items noted were pork ribs - \$14.99, rice - \$10.99; bacon - \$7.99, and ground beef - \$6.99. There was also two units of infant formula present. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

### **Charge Letter Attachments**

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

**Charge Letter Attachment 1: Multiple transactions were made from one or more SNAP households within a short timeframe.** This attachment lists 53 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits.

Taking into consideration the time required to process a legitimate purchase and the steps involved, the Retailer Operations Division considered these transactions to be unusual. While such transactions may well be done in succession, performing these processes on large transactions generally are not done rapidly. The amount of time required is, largely, proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions.

Appellant, through counsel, explained that the purchases were made on two different registers and then processed on the same EBT POS device.

The Retailer Operations Division has determined that Appellant provided a credible explanation for the transactions in Attachment 1.

**Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment documents 63 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. 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.

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Counsel reports that none of these transactions took place less **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, ample time for the customer to go home and return to the store. Counsel also states that recipients can utilize their monthly benefit in one store at one time if they choose and it is not a violation of any SNAP regulations to shop at any store multiple times daily. Both of these statements are possibilities. However, when a firm has a pattern of several customers shopping in a different manner than other nearby stores, the questions becomes why the pattern exists at this particular store. The Retailer Operations Division compared Appellant to four nearby convenience stores. Appellant conducted 53 transaction sets that met the parameters of this scan, whereas the other four nearby stores collectively conducted two transaction sets that met the parameters of this scan. Appellant's explanation does not address why this transaction pattern occurs much more frequently at Appellant than at other nearby similar stores.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #2 were legitimate purchases of eligible food.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 723 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are questionable because they are not consistent with the store's inventory. Appellant does not have any shopping carts to transport such large orders and it has limited space at the check-out counter to place items for purchase, given that it is shared with another working register. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

Appellant, through counsel, states that the high dollar transactions are routine and exceptional given that Appellant is a grocery store and not a convenience store. Appellant did not submit any evidence to support this statement and there is no evidence in the case record that supports that Appellant is a medium grocery. On the day of the store visit, the only unprocessed fresh meat was one package of ground beef and a package of marinated pork ribs. There is a meat store that is authorized and operates under the same roof as Appellant. It is unlikely that Appellant sells much more for meat. It is possible that the meat market attracts additional customers to Appellant; however, it does not explain large dollar SNAP transactions.



The Retailer Operations Division determined that Appellant's average SNAP transaction amount was greater than the average SNAP transaction amount for convenience stores in the State during the review period. Appellant's total dollar SNAP volume was more than six times the average for convenience stores as well. Although Appellant contends it is well stocked, the real question is what customers would want to buy much from Appellant's store in the first place, a convenience store that has little food variety or quantity, few dairy products, and few fresh meat products. This question is even more significant when one considers that many of the households whose transactions were cited also shopped at other, larger stores, including supermarkets and superstores.

The Retailer Operations Division compared Appellant to four other convenience stores that were located nearby. Appellant's total SNAP dollar volume was more than double each of the other four stores. The Retailer Operations Division also determined that Appellant conducted more SNAP transactions in each ten dollar range 5 U.S.C. § 552 (b)(6) & (b)(7)(C) compared to the other convenience stores. The Retailer Operations Division determined that Appellant has a high number of transactions clusters 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division considered this an indicator of trafficking considering Appellant's eligible food stock with mostly packaged food items, canned items, accessory food items, snacks, and beverages.

The Retailer Operations Division determined that the transaction pattern of Appellant exceeded the four nearby convenience stores, as seen on the table herein. The data from these nearby stores show that the transaction patterns at the Appellant firm were highly unusual and indicative of possible trafficking violations.

#### 5 U.S.C. § 552 (b)(7)(E)

Counsel explained that since many customers do not have cars and cannot carry all of the goods at one time that each may want to purchase that day. It is true that sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. The Retailer Operations Division determined that within a one-mile radius of Appellant there are 19 other convenience stores, two small groceries, three medium groceries, and one super store. The Retailer Operations Division also determined that there were 262 households that conducted the flagged transactions at Appellant during the review period. Sixty-two percent of these households shopped at a large grocery, supermarket, or super store within one day of their flagged transaction at Appellant. Seventy-seven percent of these households shopped at one of these large store types within three days of its flagged transactions at Appellant. The Retailer Operations Division determined this was an indicator that Appellant was not these households primary food source.

The Retailer Operations Division examined five households identified in the charge letter to analyze their shopping patterns at Adeline Grocery compared to their shopping patterns at other SNAP authorized stores. Despite access to better stocked stores, each of the other households conducted excessively large transactions at Adeline Grocery within a short time of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores

with a better selection of fresh meat and produce and likely better prices. The inventory and layout at Adeline Grocery does not support these transactions.

## **Invoices**

Counsel contends that the volume of goods sold by Adeline Grocery strongly supports the propriety and legitimacy of these transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Although Appellant's gross receipts increased by 20% between 2017 and 2018, its total SNAP redemptions decreased slightly by about 5% between the two calendar years. The tax returns for the two years is insufficient evidence that the questionable transactions were for eligible food items only.

Counsel did not provide any evidence to support the tax forms and specifically the eligible food inventory at Appellant. In the original response to the Retailer Operations Division Appellant submitted only 15 pages of invoices and only two were within the review period. The store owner also alleges in his statement that he purchases more than 1.1 million in goods with the vast majority being eligible foods and that it has substantial receipts. If the store has substantial receipts, why did it only submit a handful to the Retail Operations Division with most of them were outside of the review period and then none for the administrative review.

The store owner also explains that it is a very busy grocery store. Appellant did have a supply of fresh produce. There was hardly any meat and there was not fresh poultry or fish. Appellant may be a busy convenience store but being "busy" does not necessarily explain larger dollar transactions.

## **Customer Statements**

Appellant originally submitted 42 customer statements to the Retailer Operations Division with its reply to the charge letter. These statements were typed and the household signed its name and included its EBT card number. The statements indicated that the store owner and employee inspect all purchases and only allow SNAP eligible items and there was no trafficking.

With its review request, counsel submitted statements from 38 additional customers. The statements contained the household name, address, and signatures and ten points that explained the households sometimes made large transactions; sometimes made multiple transactions; it will be a hardship if the store is disqualified and the households have not trafficked. The EBT Card numbers were not provided. The Retailer Operations Division attempted to look up the SNAP transaction history of these household given the information that was provided. The Retailer Operations Divisions was able to locate 26 of the new 38 households in the State system but 12 customers could not be found. Twenty of the 26 households that were located in the system did not conduct any of the flagged transactions listed on the Charge Letter Attachments. The Retailer Operations Division determined that six customers that provided statements conducted 31 of the flagged transactions. In general, the customer statements are unconvincing given that customers engaging in trafficking violations are unlikely to admit to such behavior. The customer

statements submitted are not sufficient evidence that any of the transactions listed on the Charge Letter were for eligible food items only.

### **Convenience Store vs. Medium Grocery**

Counsel contends that Appellant was incorrectly categorized as a convenience store. According to the information Appellant submitted on its SNAP application for reauthorization and what it submitted with its 2017 and 2018 tax returns, the store's staple food sales fall within the range for the authorization of convenience stores. Counsel did not submit any information to support that Appellant is a medium grocery.

Counsel also states that Appellant is 3,000 square feet and not 1900 square feet. It is important to note that at Appellant shares space with a meat store under a separate authorization and a commercial kitchen.. This separate retailer likely accounts for the difference in square footage. Regardless, even if the actual square footage of Appellant is 3,000 square feet, it is the quantity and variety of eligible food product that is sold that is a more important factor than the space that it is laid out on. There were staple foods in limited quantities. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There were no shopping carts but there were some shopping baskets and there was also limited counter space that was shared between two registers.

### **Evidence**

Appellant denies that any trafficking of SNAP benefits occurred. Counsel contends that the charges are not based on any direct evidence but rather based on circumstantial evidence. The transactions reports are derived from the ALERT system, a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

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

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar

size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered insufficient evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

### **No Previous Violations**

Appellant contends that it has not had any previous violations. Regarding this contention, 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 the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

### **Warning Letter**

Appellant requests that a warning letter be issued. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations allow discretion in this matter nor provide for a lesser penalty or a term disqualification for violations related to trafficking of SNAP benefits. Trafficking in SNAP benefits is an extremely serious violation and both 7 USC § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that even a first time violation warrants a permanent disqualification.

### **Household Hardship**

Counsel contends that a permanent disqualification would be a hardship to SNAP households who rely on the store. In this regard, it is recognized that some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store as the normal shopping pattern of such SNAP benefit holders may be altered due to the disqualification. As indicated, the Retailer Operations Division determined that there are 19 other SNAP authorized stores within a one-mile radius of Appellant. Moreover, where there is a hardship to SNAP households, FNS may impose a hardship CMP on a firm in lieu of a disqualification where there is a lack of authorized stores in the area. However, the regulations at 7 CFR §278.6(f)(1) clearly state that "a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a permanent disqualification." Because the Retailer Operations Division has taken action to permanently, this CMP provision is not applicable in this case.

## **Administrative Review**

The administrative review process does not include an assessment of the constitutionality of the laws, and regulations under which the agency imposed the adverse action, but rather whether the agency actions undertaken were proper pursuant to those laws and, regulations, and sustainable by a preponderance of evidence. Additionally, challenges to the laws and regulations governing the SNAP are more appropriately the province of judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

## **Summary**

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. Therefore, in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

## **CIVIL MONEY PENALTY**

With its reply to the Retailer Operations Division, Appellant requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i). Appellant stated that the employees regularly access the SNAP retailer training information obtained from the FNS website. However, the Retailer Operations Division determined that there is insufficient evidence to demonstrate that the firm had established and implemented an **effective** SNAP compliance policy and program prior to the violations.

A review of the case record supports that Appellant did not provide substantial evidence that it met all of the regulatory criteria for a trafficking CMP in lieu of permanent disqualification. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## **CONCLUSION**

The Retailer Operations Division's analysis of 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 that are consistent with trafficking violations 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owners resides or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

MARY KATE KARAGIORGOS  
Administrative Review Officer

December 23, 2019