

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

Al Rafedain Meat Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0200308

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Al Rafedain Meat Market by FNS' Retailer Operations Division (Retailer Operations).

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(e)(1)(i) in its administration of SNAP, when it imposed a permanent disqualification against Appellant on December 31, 2019.

AUTHORITY

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

CASE CHRONOLOGY

By Charge Letter dated July 11, 2017, Retailer Operations informed Appellant that evidence had been compiled that it had violated SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The letter noted that Appellant could request a trafficking civil

money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt of the letter under the conditions specified in 7 CFR § 278.6(i).

Appellant, through former counsel, replied to the Charge Letter and requested an extension by fax on July 24, 2017. A third-party authorization executed July 19, 2017, was also provided. Retailer Operations mailed the extension approval letter to Appellant's former counsel on July 26, 2017,

Retailer Operations received a third-party authorization executed August 9, 2017, for Appellant's current counsel. On August 10, 2017, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). On September 29, 2017, FNS responded to the FOIA request. Appellant, through counsel, submitted a FOIA appeal on December 27, 2017, and FNS responded to the FOIA appeal on September 16, 2019. By letter dated October 4, 2019, Appellant, through counsel, responded to the Charge Letter. On November 15, 2019, Retailer Operations contacted counsel to obtain Appellant's average mark-up. Counsel replied to this request on November 19, 2019.

After considering Appellant's replies and the evidence in the case, Retailer Operations issued a Determination Letter dated December 31, 2019, informing Appellant that it was permanently disqualified from SNAP upon receipt of the letter, in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that Appellant was not eligible for a trafficking (CMP) as it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent violations of SNAP.

By letter dated January 9, 2020, Appellant, through counsel, requested an administrative review of Retailer Operations' decision to permanently disqualify the firm from SNAP participation. A third-party representation, executed January 8, 2020, was included with the appeal request. The appeal was granted by letter dated January 28, 2020. On February 18, 2020, Appellant, through counsel, requested and received approval for an extension to submit additional information up to and including February 21, 2020. On February 21, 2020, Appellant, through counsel, requested and received another extension to submit information up to and including February 24, 2020. Appellant, through counsel, submitted its formal brief via email on February 24, 2020. A hard copy, with a disc of exhibits, was sent via USPS certified mail, postmarked February 24, 2020.

STANDARD OF REVIEW

In appeals of adverse action, such as disqualification from SNAP participation, Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means 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 untrue.

CONTROLLING LAW

The controlling law in this matter is found in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 7 CFR § 278. 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) reads, 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 reads in part: Trafficking means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via 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) reads, in part: FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an EBT system...

7 CFR § 278.6(b)(2)(ii) reads: Firms that request consideration of a CMP 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 CMP 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) reads: If a firm fails to request consideration for a CMP 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(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(f)(1) reads, in part: A CMP for hardship to SNAP Households (HHs) may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) reads, in part: FNS may impose a CMP in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

SUMMARY OF CHARGES

Appellant was charged with trafficking and subsequently permanently disqualified from SNAP based on an analysis of EBT transaction data from November 2016 through April 2017. This involved the following transaction patterns which are indicative of trafficking:

1. There were multiple transactions made from individual benefit accounts in unusually short time frames.
2. The majority or all of an individual recipient's benefits were exhausted in unusually short periods of time.
3. 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 questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

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

In its replies to the Charge Letter, administrative review request, and subsequent correspondence to FNS, Appellant, through counsel, stated the following summarized contentions, in relevant part (Note: Specific contentions with respect to the SNAP transactions documented in Charge Letter Attachments 1, 2 and 3 are presented in the relevant Charge Letter Attachment Sections):

- Seeks reversal of the December 31, 2019, decision to disqualify Appellant from SNAP participation.
- Appellant specializes as a Middle Eastern grocer. To owner's knowledge, Appellant is the only retail store in the surrounding area that provides the community with such an expansive and diverse selection of Middle Eastern grocery products for competitive prices.
- Appellant's food is comparatively high-priced due in large part to special preparation and high unit volume.
- Appellant's inventory better fits a specialty food store, as Halal meats and much of its contents qualify as specialty foods. There's also an argument that it could qualify as a meat market given the portion of its sales that are derived from Halal meats, though this isn't as strong as the specialty grocery categorization. Accordingly, Appellant should be evaluated on its own, rather than compared to store type averages which differ materially from the plain facts of this case.
- There's a basic understanding of customer habits in grocery store selection and shopping that probably don't apply here. Appellant's customers are seeking out a particular type of food (Middle Eastern) which is special, not just in that significant portions have to be

imported from other countries, but that their preparation is specialized and required on a dietary basis (Halal).

- Appellant has a positive reputation in the community, as evidenced by the Google reviews, and attracts business from all over. Most of Appellant's customers are Middle Eastern immigrants who come from several different residential areas and are not strictly limited to the immediate surrounding area. Some customers say they travel three to four hours for the Middle Eastern specialty foods that only Appellant offers, prefer to buy in bulk, and don't want to make a supplemental trip any more frequently than they have to. They likely pass by other Middle Eastern food stores as a result of Appellant's inventory and prices. Appellant is located within the same shopping plaza as other Middle Eastern stores (restaurant, jeweler, hair salon, and day care), complimentary to the foods and items it provides, which results in a bigger draw for customers and may be part of the reason that some customers travel so far to get there.
- While not all customers live far away, those that do tend to purchase enough food to last weeks at a time. Frequently, this involves purchasing bulk rice, goat, and other items that have comparatively high quantity and purchase prices.
- Appellant provides telephone order service to its customers. Customers call ahead to place an order, then the order is prepared and pre-tabulated when they arrive to pick it up. Most large purchases are calculated ahead of time, during the phone call. When it comes time to pay, the total transaction sizes are already identified. Telephone orders reduce the amount of time between transactions and eliminate concerns about customers wandering the store looking for items to bring to the register. Entering large purchases into the register can involve less than a handful of items.
- Appellant typically has two personnel work the register to expedite each transaction as quickly and efficiently as possible, as its customers appreciate the fact that they can conduct their shopping as quickly as possible. Transactions were processed in a team-work style effort and customers were assisted in carrying items to their vehicles.
- Given Appellant's average markup was roughly as little as 30%, there was more than enough inventory on the shelves to account for the amount of transactions conducted with SNAP benefits during the review period.
- The on-site inspection did a moderate job of depicting Appellant, citing too few of its more expensive items and did not adequately detail the Halal meats, many of which are dependent upon poundage for price calculation. The inventory notes show Appellant to be sufficiently stocked and sufficiently provisioned to satisfy the purchase amounts listed in the Charge Letter.
- With regard to the alleged analysis of the store comparison, it is entirely impossible for the undersigned to deduce what the actual data used was or the result concluded therefrom. The copy of the Case Analysis Document (CAD) provided to Appellant is heavily redacted and provides no statistical data or useful information. It is entirely unclear which stores, if any, were used as proper comparison stores and what was also offered therein. In order to reasonably compare any store to Appellant, USDA would have to identify Middle Eastern specialty stores within a reasonably close proximity, that operate on the same business model, to determine if these transactions are somehow deviant from what would be reasonably expected. Given the dearth of reasonable local comparisons, USDA cannot accurately compare Appellant's transactions with others and

should evaluate Appellant in light of its stated positions, data, and information submitted herewith.

- The CAD cites a complaint in 2016 that Appellant trafficks benefits and sells ineligible items to known customers. This should not be a part of the considerations of this case. The onsite RIB inspection didn't find evidence to support the complaint and there's no way for Appellant to vet the complainant, who could have been a disgruntled customer, competitor, or other person seeking retribution for some unknown slight.
- The RIB investigation in 2017 was conducted during the same period as the transactions in the Charge Letter. In each store visit the investigator attempted to purchase ineligible items, traffick, and otherwise cause the clerk to commit SNAP violations but no violations occurred. If Appellant was trafficking, as alleged, then it is likely that the investigator would have been able to commit a program violation of some kind. The fact that the investigator was rebuffed each time makes it unlikely that the transactions in this case were trafficking.
- Appellant believes it is important to consider the limitations of the ALERT system, as its data is not always accurate. The numbers fail to account for special business practices, differences in demographics and foodstuffs, and geographic areas. The District Courts have cautioned USDA on relying too heavily upon numbers generated by ALERT. Appellant cites four court decisions to support its position that ALERT data is unreliable for purposes of disqualification.
- The sum total of USDA's evidence is EBT analysis. By USDA's own sworn statement, ALERT scans are not meant to identify trafficking. Instead, an EBT analysis is predicated upon having a good understanding of the store's operational practices and inventory. Context is king, and in this case, Appellant has provided a substantial amount of context to provide alternative, credible explanations for how these transaction categories came to exist.
- Appellant vehemently denies trafficking. It is selling high end Middle Eastern foods, Halal Meat, and specialty items. Appellant has shown by a preponderance of the evidence that the transactions cited in the Charge Letter are more likely than not innocent transactions rather than trafficking.
- Appellant requests a CMP be issued in lieu of a permanent disqualification if USDA determines that trafficking occurred. An effective compliance policy and program at Appellant is reflected by its significant compliance history since becoming SNAP authorized on May 22, 2014, never receiving a warning letter for violating SNAP, and evidenced by the Store's negative RIB investigation.

In support of these contentions, Appellant, through counsel, submitted the following documents for review:

- 4 Google reviews.
- 11 affidavits from alleged SNAP HHs.
- 69 pages of bank statements (November 01, 2016 - April 30, 2017)
- 206 pages of invoices (November 8, 2016 – March 2, 2017)
- 42-page summary of invoice totals and bank statements (November 2016 – April 2017)
- 18 pages of Illinois tax returns: ST-1 and ST-14 (November 2016 - April 2017).
- 1-page Illinois Monthly Benefit Issuance Schedule, dated July 2, 2014.

- 16 color photographs of Appellant’s inventory.
- 1-page report entitled, “Profile of SNAP HHs in 2017,” published by USDA FNS.
- 4-page article entitled, “Know Your Core, Protect Your Core”, published by Convenience Store News for the Single Store Owner, dated April 2016.
- 38-page report entitled, “U.S. Grocery Shopping Trends, 2016,” published by FMI.
- 49-page Nutrition Assistance Program Report entitled, “Foods Typically Purchased by SNAP HHs,” published by USDA, FNS, Office of Policy Support, dated November 2016.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Appellant for participation in SNAP on May 22, 2014, as a small grocery store, selling mostly Middle Eastern specialty food items. The case record indicates that in reaching a disqualification determination, Retailer Operations considered information obtained during a May 24, 2017, store visit conducted by an FNS contractor to observe the nature and scope of Appellant’s operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for Appellant’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,100 square feet in size;
- Approximately 40 square feet of dry food storage out of public view;
- There are two shopping carts and nine hand-held shopping baskets available for customer use;
- There is one cash register, one EBT point-of-sale (POS) device, and no optical scanners for ringing-up SNAP transactions;
- There is one checkout counter area with limited check-out counter space;
- The store does not primarily sell one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables;
- There are no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, or grocery package deals;
- There are no meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- There is no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- There is a special pricing structure, such as prices ending in \$.x9 and/or \$.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone orders are taken;
- Delivery is not offered;
- There is no kitchen area and/or food preparation area;
- Hot food or food sold for on-site consumption is not sold;

- There is a meat counter with nominally priced meats posted from \$1.99-\$6.99 per pound;
- There is a 5’x7’ meat freezer in the deli area;
- The four most expensive (costing \$5.00 and above) eligible food items in stock were: 40-lb bag of Royal Rice priced at \$35.99; 5 kg box of Jericho Sweets priced at \$47.99; 11-lb box of Medjoo Dates priced at \$49.99; and 40-lb bag of AAHU Rice priced at \$59.99; and
- Ineligible nonfood items included health and beauty aids, paper goods, cleaning products, and housewares.

The store visit report and photos show Appellant carried sufficient quantities and varieties in each of the four staple food categories to be eligible for SNAP participation. Store photos reveal an International, Middle Eastern, small grocery selling some specialty food items, large bags of rice, meat/seafood items, canned goods, packaged goods, spices, and single serving drinks. On the day of the store visit, there was limited dairy, limited fresh meat, no whole lambs, and no fresh produce. The store stocks some food items that can be found at traditional grocery stores. The available checkout space affords very little space for SNAP customers to place their food items. The report notes the store manager stated telephone orders are taken and encouraged for meat orders, small quantities of meat are normally delivered daily, and more groceries are stored at a nearby friend’s store due to limited space. Given the available inventory and store layout as noted above, this review could find no reason why Appellant’s redemption patterns differed so significantly from those of similar-sized competitors offering similar food items.

Charge Letter Attachments

On review, the investigative materials provided by Retailer Operations, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and HH shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in Charge Letter. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge Letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Multiple Transactions Made from Individual Benefit Accounts in Unusually Short Time Frames (Charge Letter Attachment 1)

This Charge Letter Attachment documents 106 sets of transactions (216 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were completed by 78 different SNAP HHs. Multiple transactions conducted by the same HH 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.

Appellant, through counsel, provided several contentions with regard to Attachment 1:

- The fastest transactions, numbered 1 and 2, is a quintessential example of a meat purchase plus a supplemental purchase. These transactions occurred **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** are the result of a telephone order of a whole medium lamb (priced at \$240.00-\$250.00 depending upon the pound) or meat and bread. The phone order is pre-calculated by store personnel when the meat order is placed. When the customer came to the register to pay, the clerk already had the ticket for the whole medium lamb or meat and bread, then rang up the additional items - most likely rice or another bulk item. This means that the store clerk identified the item visually and entered the price into the machine from memory.
- In the timespan **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, it's not unreasonable to expect a customer to identify the second item, pick it up and return to the counter, have the clerk ring up the item and input the amount into the EBT terminal, and then allow the participant to swipe their card and enter a PIN before the transaction is approved. The store is 1,100 square feet, so the customer would only have to take a few steps both directions, and the entire exchange could have been completed, from a logistics standpoint, in a matter of moments.
- Some of the transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** are supplemental purchases. Reference is made to The Journal of Marketing article, "Studying Customer Behavior in Retail Stores." Appellant's local customers could have purchased all of their items to make a specific meal, and once home realized they missed something crucial for the meal that is important enough for them to drive back and make another purchase or decided that they wanted to purchase items they saw during their first trip, but originally opted not to purchase.
- The **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** result of customers arriving early to purchase breakfast and ask about fresh meat that isn't delivered until noon, or in some cases as late as 6:00 p.m. to 8:00 p.m. Customers place an order before the meat delivery has arrived and then return later that day, after work or whatever their schedule may be, to pay for and pick up their meat order. These transactions are supplemental purchases.
- Occasionally there would be a delivery of specialty food items received by Appellant once or twice a month, which contained items that the customer had been waiting for, so they end up having large purchases in one day. These transactions fit logistically into this model: one transaction (a whole medium lamb, meats, and breads) which can occur telephonically and are already ticketed and ready, and a second purchase (rice, spices, nuts, or breads).
- Illinois SNAP benefits are issued between the 1st and 10th day, 13th, 17th, and 20th days of each month. According to Government research, purchases made within the first 7 days after receiving benefits is not unusual, and multiple purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** after receiving SNAP benefits is not unusual.

- Many of the other transactions function the same way - a large pre-tabulated meat purchase and a comparatively smaller item purchase - conducted on the same account. Given the sheer number of high dollar items, it's not difficult to arrive at amounts even **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** by picking fewer than 5 items and running a second transaction. Given the shopping carts and baskets, and assistance from store personnel, it's not unreasonable for Appellant to have conducted these transactions in the timeframes.
- Many of the transactions are the natural result of Appellant permitting telephone orders of meat. It is processed as one transaction and then the additional groceries that the customer shopped for upon arriving are processed as a separate transaction.
- Multiple members of the same HH will shop together ("co-shopping") and make their purchases separately using the same account and card in quick succession. This is more common with HHs that travel further and share transportation, but occurs with local HHs as well.
- Though a rare occurrence at Appellant, participants will go on a spending spree making purchase after purchase without leaving the store, or by returning after a brief absence, reducing their benefits in short order.
- This is a Middle Eastern Meat Market which specializes in catering to specific cultures. Appellant's customers are Middle Eastern immigrants who tend to shop in bulk (buying a large quantity of food at the beginning of the month and then spreading those meals out). They tend to host large family meals, as well as celebrations for weddings, birthdays, funerals, and religious events. For these events, larger purchases of food are common.
- The primary driver of causality is the meat orders. These items are pre-ordered, high value purchases. These orders satisfy only one of the staple food groups, so the supplemental purchases typically satisfy supplemental needs like grains and rice and baking items. Because these customers have fewer shopping options to get their food, Appellant is more likely to have supplemental purchases occur consecutively as the HHs round out their food and pantry needs.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted 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 the Appellant's stock and facilities and are therefore, indicative of trafficking.

It is not unusual for a small number of SNAP HHs to conduct multiple transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. For example, a forgotten item. The second, third, and even fourth transaction in some of the sets is too large to consist of a forgotten item. These transactions display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. They do not contain the characteristics associated with a recipient conducting two consecutive transactions, returning to purchase a forgotten item.

While some of the transactions included in this Attachment may be the result of a customer placing an order for meat, the customer paying for their non-meat groceries, and then paying separately for their meat purchase, the report and 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 or food cases for sale. In addition, there was a small checkout area, no scanner or conveyor belt to expedite high dollar or rapid consecutive purchases.

As for co-shopping and whether or not such shopping habits actually affected Appellant during the review period, this argument is nothing but conjecture. Appellant has offered no evidence to show that co-shopping is particularly common among SNAP recipients in Cook County, Illinois. If co-shopping truly impacted Appellant, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same HHs in short periods of time. But this is not the case.

The record indicates that SNAP customers who shopped at Appellant during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

It should be noted that the repetitive nature of the transactions identified in Attachment 1 is substantially different in Appellant than in other nearby competitor firms, giving credence to the notion that trafficking may be taking place. Unfortunately, Appellant has offered no credible evidence to support its contention that these were legitimate transactions. Such evidence could include cash register receipts or copies of phone orders to prove that the transactions cited in Attachment 1 were legitimate purchases of eligible food.

Majority or all of Individual Recipient Benefits Exhausted in Unusually Short Periods of Time (Charge Letter Attachment 2)

In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists 153 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. During the review period, there were 138 suspicious sets of transactions involving 94 HHs. Depleting the HHs' entire allotment in one or a few transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP benefit HHs. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking

Appellant, through counsel, provided several contentions with regard to Attachment 2:

- The explanations for both Attachment 2 and Attachment 3 are interrelated. Appellant offers its clientele a considerable inventory and a large variety of high-priced Halal meat,

specialty Middle Eastern food items, and spices. Appellant has no control over how quickly a SNAP HH expends its benefits, nor should they somehow be responsible or required to turn away their business simply because the customer chooses to make significant purchases. There is no regulatory or statutory basis for FNS to punish the Appellant for such actions.

- SNAP HHs making large purchases and expending their benefits are the result of Appellant's inventory, SNAP participant shopping habits, expensive specialty items, and bulk items. It is common for customers to purchase multiple packages of these items and shop for their grocery needs for the entire month at one time. This is supported by Appellant's SNAP customer affidavits wherein customers attested to spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant, exhausting between 55-70% of their SNAP benefits. The majority attested to frequenting Appellant 1-2 times per month, which results in larger transaction totals than if said HHs were to shop every week.
- Appellant cannot control how quickly its SNAP customers spend their money, nor should they be somehow responsible or required to turn away their business simply because they choose to continue to make significant purchases. There's no statutory or regulatory basis for USDA to punish Appellant for such actions over which it has no control, and which would harm the business continued existence without reasonable basis.
- Customers are not lugging around a hundred cans of food. Instead, they're pre-ordering meats and other grocery items. The meats are pre-packaged and carried out to the customer's vehicles by the store clerk, or with the HH using one of the store's carts. In some instances, HHs will have multiple members shopping together each of whom can assist in loading groceries.
- Each item does not have to be scanned. The purchases can be rung in through visual identification and priced by memory when they're not pre-tabulated based upon weight and identity. From a logistics standpoint, it's entirely possible for Appellant to run these transactions.
- The transactions are not trafficking and supported by Appellant's substantial inventory, reasonable pricing structure, reliance as a primary grocer for some minutiae of local participants, or the general aberration and statistical outlier to the average whole. That USDA segregated these transactions from the remainder is of little consequence as most other grocers in Appellant's geographic area likely have the same number or greater of similar transactions.

It is true that retailers have no regulatory or statutory obligation to monitor the spending habits of SNAP recipients, including how much a HH may spend at a store at a given time. It is also true that some HHs choose to spend most or all of their monthly allotment at a single store, especially if that store is conveniently located or offers food items that are not readily available elsewhere. However, the transactions cited in the Charge Letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory, and significantly different from patterns found in nearby competitive stores – even those competitors who sell similar or identical food items. 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 each of the Charge Letter attachments are overtly suspicious when they occur on an occasional or intermittent basis. However, 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.

Moreover, a government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80% of a HH's allotment remains unspent. Even after seven days, 40% of benefits still remain unspent. It typically takes about two weeks to deplete 80% of one's benefits, and three weeks to deplete 90%.¹ Depleting a large portion of one's SNAP balance in a very short period of time, leaving little or no benefits for the rest of the month, is inconsistent with normal shopping behavior of SNAP HHs.

Although many SNAP HHs do shop early in the month as opposed to later in the month, most HHs do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a store like Appellant that has a moderate staple food stock, limited dairy, limited fresh meat, and no fresh produce.

Unfortunately, Appellant's arguments are anecdotal and hypothetical. Appellant has not offered any actual evidence to prove that the specific transactions listed in this Attachment are legitimate purchases of eligible food. Without such evidence, this review has little option but to conclude that the transactions listed in this attachment were, more likely than not, the result of trafficking.

Excessively Large Purchase Transactions Made from Recipient Accounts (Charge Letter Attachment 3)

Listed are 1,437 SNAP transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

Appellant, through counsel, provided several contentions with regard to Attachment 3:

- These transactions are the result of Appellant's inventory and/or are the normal reflections of a SNAP participant's shopping habits.
- The vendor receipts submitted clearly show that there is far more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory on Appellant's shelves. With the varieties and quantities supported by the documentary evidence, USDA cannot make a straight-faced argument that the transactions are impossible for want of items to sell. The question becomes an issue of whether or not the transactions found in the data could be supported by Appellant's substantial traditional inventory – both in quantity and price – which it clearly can.
- In Illinois, SNAP participant HH benefits are issued between the 1st through the 10th day, and the 13th, 17th, and 20th days of each month, based upon SNAP recipients' case type and name. A substantial portion of the "large transactions" occurred during said time frame. It is Appellants' position that such "large transactions" are not suspicious as

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

it is not unexpected that SNAP participants are going to spend their money quickly in this timeframe.

- Aside from Appellant's substantial inventory, a reasonable and plausible explanation for these higher transactions is that these HHs have a larger amount of SNAP residents residing therein, requiring a larger quantity of grocery products each month than those HHs with less participants. Unfortunately, as USDA has redacted all of the identifying SNAP participant information, Appellant is unable to confirm the actual amount of SNAP residents residing in said HHs.
- These transactions are the result of Appellant's inventory and/or are the normal reflections of SNAP participants' shopping habits. Appellant clearly stocked enough inventory to account for said large transactions. Appellant offers high priced, specialty Middle Eastern items. It is common for customers to purchase multiple items at one time and to shop for their grocery needs for the entire month at one time.

Appellant, through counsel, submitted 16 undated color photos which appear to be recent photos showing fully-stocked store shelves, specialty foods and pricing, as well as Appellant's meat counter and what appears to be approximately 4 whole lambs hanging in the meat cooler. The meat counter photos indicate the price for baby lamb leg and baby lamb per pound have increased by \$0.50 from the date of the store visit. The submitted photos add no value as they do not represent conditions and inventory on the day of the store visit and do not explain the suspicious transactions patterns that occurred at Appellant.

FNS does not doubt that HHs purchase specialty food items and meats by the pound at Appellant. However, the store visit report showed no indication that Appellant sold meat in bulk. The highest priced meat item, sold by the pound, was baby lamb leg nominally priced at \$6.99 per pound. Appellant does not appear to have the on-hand, per pound, meat inventory to support many of the transaction amounts and patterns in the Attachment. There were no whole lambs in the meat cooler and no signage offering Kraft Cheese at 4 for \$9.99, as mentioned by Appellant. Appellant did not provide any evidence such as flyers, sales ads, or copies of telephone orders to support the transactions in this Attachment were legitimate food purchases.

During the review period, the average SNAP transaction amount for a small grocery store in Cook County was \$13.39, and slightly higher for the State of Illinois at \$14.36. The average SNAP transaction amount in this Attachment is more than 10 times larger than the average SNAP purchase amount for this store type in Cook County, Illinois. Even the smallest transaction documented in this Attachment had an amount which is more than 4 times higher than the average SNAP purchase amount for Cook County, Illinois. The largest single transaction **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is over 42 times larger than the average SNAP transaction amount for a small grocery store in Cook County, Illinois. The large transactions documented in this Attachment are not consistent with a small grocery store in Cook County or the State of Illinois, including those that sell similar types of specialty Middle Eastern food items such as Halal meats, large bags of rice, and significantly more fresh meat and fresh produce than what Appellant offers.

It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the case record shows that

Retailer Operations determined through agency mapping systems that there are 32 SNAP authorized retailers within 1.25 miles of Appellant, including 11 other small grocery stores, 9 medium grocery stores, 2 large grocery stores, 6 super stores, and 4 supermarkets. The comparison stores sell a comparable or larger variety of staple food items at comparable or better prices as compared to Appellant.

Appellant, through counsel, submitted 11 customer affidavits from its SNAP customers. Of the 11 customer statements submitted, only 4 were found on the Charge Letter Attachments and only explain 0.02% of the transactions in Attachment 3 and less than 1% of the transactions in Attachment 2 of the Charge Letter. It is not uncommon for retailers to conduct legitimate transactions while still trafficking SNAP benefits with a select few HHs. An analysis of these four HHs found that the amount filled in the blank by the customer, compared to the actual amounts spent, was not accurate. Some of the HHs did bypass super stores to transact business at Appellant, and some shopped at a nearby supermarket, a Middle-Eastern specialty store that also carries Halal lamb and at likely better pricing. The customer statements do not explain a vast majority of the transactions listed in the Charge Letter and the truth of such statements cannot be verified by this review. Customers engaging in trafficking violations are unlikely to admit to such conduct. Furthermore, affidavits, even if well-intentioned, do not typically represent HH's actual shopping behaviors, as HHs generally do not retain records of transactions and often do a poor job of recalling spending patterns at a particular location.

Retailer Operations analyzed the shopping patterns of three HHs in the Charge Letter at Appellant, compared to their shopping patterns at other SNAP authorized stores. Each of these HHs had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP HHs had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled HHs conducted excessively large transactions at Appellant often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery with limited dairy, limited fresh meat, and no fresh produce would have legitimate SNAP transactions greater than these larger and better stocked stores.

There didn't appear to be legitimate bases for SNAP customers' unusual attraction to Appellant such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered at the time of the store visit. The case record shows Retailer Operations has done a thorough evaluation of other nearby stores that sell foods similar to Appellant, particularly Halal meats and Middle Eastern food items. There is clear evidence that a comparable store nearby is superiorly stocked in the area of fresh meat, including whole lamb and whole goat, and also has Halal preparation or butchering services onsite. The comparable store also sells 50-pound bags of rice and flour, other Middle Eastern specialty items, more dairy and fresh produce, and prices more competitive than Appellant. The comparable store has greater square footage than Appellant, and yet has nowhere near the volume of extremely large transactions that Appellant has.

An invoice analysis shows most of Appellant's food stock consists of specialty food items, which includes accessory foods, frozen entrees, beverages, snacks, nuts, dates, rice, and pickled

fruits. Appellant had significantly more fresh Halal meats in store than what was actually evidenced in the store visit report and photographs. For purposes of the inventory analysis, Retailer Operations used 30% as Appellant's average markup and the invoices provided by Appellant. The analysis found Appellant did not purchase enough inventory to cover its SNAP redemptions for the review period. Even if Appellant had a 75% markup, it still would not have had enough eligible food stock to cover the redemptions. Appellant, through counsel, provided it was unable to locate a substantial amount of its vendor invoices for the review period. There was no mention of making an effort to contact the vendors to obtain lost or missing invoices to support this claim.

Even if the invoices provided for review did show that Appellant had purchased sufficient food inventory to account for its SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day or the majority of benefits being exhausted in short timeframes. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a moderate variety of stock in the store, limited dairy, limited fresh meat, and no fresh produce, a greater variety of foods at comparable or lower prices at other stores, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Appellant to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP HHs to shop there, a small grocery store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

The tax documents provided essentially mirror the SNAP redemptions in STARS, but do not provide evidence to explain the transactions in the Charge Letter. The bank statements provided show Appellant's credits and debits, and what appears to be copies of written checks to evidence the store purchased meats from two different vendors. However, the bank statements do not give a detailed account of what was purchased from the vendors. Therefore, they do not prove that the suspicious transactions and transaction activity that occurred at the store were due to legitimate SNAP purchases.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out supports Retailer Operations' determination. Based on a preponderance of the evidence, the irregular transaction patterns cited in this Attachment are more likely than not the result of trafficking in SNAP benefits.

Publications

Appellant, through counsel, submitted and/or referenced various USDA reports, a report from FMI, and articles from Convenience Store News, Single Store Owner magazine, and the Journal of Marketing.

While informative, this review finds that the reports and articles provided to be of little relevance, as they offer no explanation for the specific transactions listed in the Charge Letter and provide no insight as to whether the topics presented actually impacted Appellant. The reports address demographic information and customer behavior and habits, which play a role in SNAP transaction patterns generally, but their lack of specificity in relation to Appellant renders them ineffectual in this matter.

Case Laws

With regard to the case laws cited by Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not Retailer Operations duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

Negative RIB Investigation Report

Appellant, through counsel, contends a complaint in 2016 that Appellant trafficks benefits and sells ineligible items to known customers should not be a part of the considerations of this case. The onsite RIB inspection didn't find evidence to support the complaint and there's no way for Appellant to vet the complainant who could have been a disgruntled customer, competitor, or other person seeking retribution for some unknown slight. Further, the RIB investigation in 2017 was conducted during the same period as the transactions in the Charge Letter. In each store visit the investigator attempted to purchase ineligible items, traffick, and otherwise cause the clerk to commit SNAP violations but no violations occurred. If Appellant was trafficking, as alleged, then it is likely that the investigator would have been able to commit a program violation of some kind. The fact that the investigator was rebuffed each time makes it unlikely that the transactions in this case were trafficking.

FNS acknowledges that a negative RIB investigation occurred at Appellant, but a negative RIB investigations does not negate the current charges against Appellant. A complaint was received by FNS in June 2016, which stated Appellant is trafficking benefits and sells ineligible items to certain known customers. It is not uncommon for a retailer to conduct legitimate transactions, while still trafficking SNAP benefits with a select few HHs. Simply because trafficking did not occur with the investigator does not provide concrete evidence that trafficking is not occurring at Appellant. In addition, Appellant has no way of knowing what time the investigator conducted the visits; therefore, the mention of the investigator having to be present during one of the 29 flagged transactions is merely speculation.

Evidence of Trafficking

Appellant, through counsel, vehemently denies trafficking of SNAP benefits. It states it is important for this review to consider the limitations of FNS' fraud detection system known as ALERT. It contends FNS over-utilizes this system and has created an internal belief that the system is infallibly accurate, and cites four court cases in support of its position.

It should be noted that considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether Retailer Operations appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

This review acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data or transaction data under an EBT system. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. Retailer Operations must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which reads 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 EBT system.

The case record shows that Retailer Operations also conducted a time and distance report that shows Appellant conducted manual transactions for a SNAP HH within too short of a time period from the HH swiping the same card at another SNAP authorized retailer more than 124 miles away. The SNAP Retailer Training Guide clearly states you must not process transactions without a customer's card or PIN present. This further supports that violations of the Program are occurring at Appellant.

From all indications, this review finds that Retailer Operations 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. This further supports violations of the Program are most likely occurring at Appellant.

CIVIL MONEY PENALTY (CMP)

Appellant, through counsel, contends an effective compliance policy and program is reflected by its significant compliance history since it became an authorized SNAP retailer on May 22, 2014, specifically the fact that it never received a warning letter for violating SNAP regulations and is further evidenced by the negative RIB investigation.

In the Charge Letter, Retailer Operations informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within 10 calendar days of receiving the Charge Letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i), even though it was informed of its right to do so in the Charge Letter.

Even if a timely request had been submitted, Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate Appellant had established and implemented an effective compliance policy to prevent SNAP violations. Therefore, Retailer Operations' decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

Prior to a disqualification determination, Appellant is given an opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter.

Retailer Operations' analysis of Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size, and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. Appellant's contentions do not outweigh this evidence.

It is true that FNS does not require any documentation from the firm and cannot require the firm to keep specific transaction records. This review freely acknowledges that FNS cannot require a firm to do anything but follow SNAP regulations. It has no say on the firm's hiring or firing practices; on which specific food items a store can offer; on whether the firm uses optical scanners or security cameras; on whether it has shopping carts or shopping baskets; or on the retention of a firm's receipts and other records. In truth, a firm's ownership may choose to run the store any way it wishes. However, if a firm expects to convince this review that unusual and suspicious transactions are, in fact, legitimate, some level of credible evidence is generally necessary to reach a preponderance and satisfy this reviewer that reversal is appropriate.

It is the finding of this review that Appellant did not provide sufficient evidence to support its claim that all listed transactions were due to the sale of eligible food items. Therefore, based on

a review of all of the evidence in this case, it is more likely true than untrue 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.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to 7 CFR § 279.7 with respect to applicable rights to judicial review of this decision. 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 Appellant's owners reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within 30 days of receipt of this Decision. Please note that the judicial filing timeframe is specified in the Act, and this office is unable to grant an extension.

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.

Kim Dameron
Administrative Review Officer

December 15, 2020