

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

**Alsinbad Smoke Shop & Mediterranean  
Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0201672**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Alsinbad Smoke Shop & Mediterranean Market (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated August 11, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of January through June 2017. The letter noted that the sanction for trafficking is permanent disqualification, as provided by 7 CFR §278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the

conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated September 6, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On September 18, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

### STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

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

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

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

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

7 CFR §278.6(f)(1) states, in part:

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

7 CFR §278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations...

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

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.

### **SUMMARY OF THE CHARGES**

- A series of multiple SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** were debited from individual benefit accounts in unusually short time frames (Attachment 1).
- In a series of SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, the majority or all of individual recipient benefits were exhausted in unusually short periods of time (Attachment 2).
- A series of excessively large SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** were debited from recipient accounts (Attachment 3).

### **APPELLANT'S CONTENTIONS**

In Appellant's reply to the Charge Letter, in its written request for review dated September 18, 2017, and in subsequent correspondence, it was argued that:

1. Appellant requested that the permanent disqualification be stayed pending the administrative review.

2. The buying habits of customers are an undependable way to determine where a store is engaging in illicit activity, especially when the population involved is unique. In this case, many of the purchases listed as large in the Charge Letter are not large purchases for the market. Appellant's customers routinely exhaust monthly benefits because they buy food for an entire month in one transaction. The evidence in the case is insufficient to conclude that SNAP-benefit trafficking occurred.
3. If trafficking, Appellant would not be spending a majority of gross income to buy SNAP-eligible products because he would not be selling the products. The build-up of products in the store since the disqualification is further evidence that Appellant was selling the products. Appellant provides tax documents in support thereof, which indicate that the cost of goods sold was 82.65% of gross income in 2015 and 73.60% in 2016. Additionally, the firm accepted a similar amount of SNAP benefits from January to June 2017. Appellant provides product purchase receipts/invoices in support of the above. Appellant also provides a listing of "SNAP Al Sinbad Market Receipts," which appears to indicate that Appellant has receipts/invoices for merchandise purchased for resale. Additionally, invoices provided show that Appellant was continuously buying SNAP-eligible products for the store and spending a large portion of gross income on said products. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
4. Appellant notes that language and cultural barriers create difficulty in shopping for immigrants and refugees in the area near the store at issue. Appellant also notes that customers often would not have adequate funds to pay for purchases at the time of the sale or would not bring a form of payment to the store when shopping. To accommodate customers' needs, Appellant began extending credit to them. When a purchase was made on credit, Appellant would enter the customer's identifying information in a notebook along with the amount owed. Purchases would add up over a period of time varying from weeks to months. Most would pay off credit balances after receiving a paycheck or SNAP benefits. Both SNAP customers and non-SNAP customers were extended credit. Appellant kept track of credit payments in a notebook, a copy of which is provided. Customers would often pay off large portions owed or all of what was owed in a single transaction. Appellant would debit customers' cards once to pay off previous purchases and a second time to pay what was owed for purchases that day. If benefits remained, they would sometimes make an additional purchase. If the customer did not know the balance, they would sometimes request Appellant to make multiple debits to pay down their balances. This resulted in the series of transactions in the Charge Letter. This procedure was applied to both SNAP and non-SNAP customers. Evidence supports a finding that credit was extended to Appellant's customers and as such does not implicate trafficking. Appellant has ceased extending credit to customers. Appellant provides pages from the firm's notebook and a Declaration of the Owner in support of the above. Accordingly, the firm is subject to a one-year disqualification, as provided for in 7 CFR 278.6 (e)(4)(ii).
5. Appellant was unaware that accepting SNAP benefits as payment on credit accounts was counter to SNAP rules and regulations.
6. Appellant provides customer statements in support of the review request.
7. The firm qualifies for a hardship civil-money-penalty; such penalty should be nominal, in accordance with § 3.91(b)(3)(i) as well as 278.6(d)(1). As credit violations warrant only a one-year disqualification, such demonstrates that such violations are to be viewed as

less egregious. Any significant civil money penalty will result in the closure of the Market as Appellant's income is approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per year and its income will further suffer during the pendency of the administrative review. Since Appellant was not involved in nefarious activities such as trafficking and has admitted to extending credit to customers and accepting SNAP benefits as payment for credit extended, Appellant requests a civil money penalty in lieu of a one-year disqualification pursuant to 7 CFR 278.6(f)(1).

8. The firm has received no prior warning of violations and had no intent to commit violations, as evidenced by cooperating with the agency in responding to the Charge Letter.
9. Appellant describes the Owner's overseas history/background and also the Owner's history in the U.S. and assistance provided to the U.S. military. Appellant provides copies of letters of appreciation and commendation from military entities.

### **ANALYSIS AND FINDINGS**

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on April 10, 2017, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- Estimated 1500 square feet of store space.
- No optical scanners used.
- Prices in variations of \$.x5. Photos: 5, 47 and 48.
- One checkout area, one cash register and one card reader. Check-out counter approximately 1.5 X 2 feet, surrounded by candy, tobacco products and non-food items. Photos: 9 and 16.
- No phone orders.
- No delivery offered.
- No transaction rounding.
- Highest Priced Items:
  - Kubba of Wheat - \$8.75 for two pieces.
  - Kuba Rhala - \$8.75 for 12 pieces.
  - Beef Borak - \$8.75 for 10 pieces.
  - Beef franks - \$5.75 for 12-ounce package.
- Moderate variety of Middle Eastern products; mostly inexpensive small containers of candy and other accessory food items as well as canned goods and small packages of grains/rice/bread/seeds and spices. Some frozen meat, vegetables and other food items in small packages. Photos: 1, 6, 10, 11, 12, 15, 17, 18, 22, 23, 27, 28, 29, 30, 32, 33, 34, 35, 37, 38, 39, 40, 45, 47 and 48.
- One chest freezer with frozen fish: 42.
- Several large bags of rice. No large/expensive items or bulk items offered other than rice. Photos: 6 and 44.
- The firm also operated as a general store/gift shop/souvenir shop. Ineligible items

occupy a significant amount of floor space at the store. Photos: 1, 9, 10, 12, 16, 19, 21, 22, 26, 33, 34 and 45.

- All above information obtained in collaboration with store personnel.
- The firm also sold tobacco and tobacco-related products (including pipes, hookahs and other items), health and beauty products, paper goods, cleaning supplies, housewares, gift items, phone accessories, party goods, souvenirs, clothing and other non-food items.
- No kitchen or food preparation area.
- No hot food sold.
- No dining area.
- No deli section.
- No meat/seafood bundles/specials or fruit/vegetable boxes.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items (other than rice, as noted). The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1.5 by 2 feet of useable space) but was otherwise surrounded by candy, tobacco products and non-food items. This documentation reflects that the firm was a moderately-stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small grocery store in the state of Idaho during the analysis period was \$30.91, reflecting that excessively large purchases are not routinely made in such stores.

Regarding contention 1 above, a permanent disqualification for SNAP benefit trafficking cannot be held in abeyance pending administrative review, in accordance with 7 CFR § 278.6(b)(2) and (c). Additionally, 279.4(a) states: "...permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in 278.6(b)(2)..." There is provision for a stay of agency action during the pendency of a judicial review if Appellant makes a timely application to the court and after hearing thereon the court stays the action if it is shown that irreparable injury will occur absent a stay and that the firm is likely to prevail based on the merits of the case (see 7 CFR § 279.7(d)). However, contained within this same provision is the exception to the allowance of a stay: "However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period."

In regard to contention 2 above, Charge Letters are not required by statute or regulation to provide investigative techniques/case analysis standards or even to provide a totality of the evidence contained in the case file, but rather to present a firm with transactions the ROD Office has found to be implausible given various considerations and to provide the firm the opportunity to explain how such transactions may be legitimate. The record reflects that the ROD Office has provided a lengthy and comprehensive case in support of its sanction determination, as is discussed in further detail herein. Appellant implies that the substance of the ROD Office's case against the firm is derived from data only and as such is insufficient. 7 CFR §278.6(a), noted above, establishes the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. Such cases are developed with the standard in mind that a **prima facie** preponderance of evidence is sufficient in order to charge a firm with SNAP-benefit trafficking. Various statistical

tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (small grocery stores, in this case) in the state of Idaho. As noted, the record contains documentation, including photographs of the firm's interior and exterior, an inventory survey and a layout diagram, of a visit to Appellant's firm conducted on April 10, 2017. These documents reflect the firm to have been a moderately-stocked small grocery store.

This and other data presented the ROD Office with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the ROD Office does not contend that the EBT (electronic benefits transfer) transactions detailed in its Charge Letter are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns on a consistent and comparative basis over substantial periods of time such activity is identified for further analysis. Only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these procedures are shown by the record to have been duly performed in all relevant and appropriate detail. Moreover, as noted above, the regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store **on the basis of evidence obtained through a transaction report under an electronic benefit transfer system**; consequently, transaction data as a basis for the charges at issue is as valid as evidence obtained through an undercover investigation. ROD Offices are not required to apply any other standard, including an evaluation of case law, than that described herein. Accordingly, the case against the firm is not reflected by the record to lack evidentiary value or to fail to adhere to established investigative methodology, but rather to be comprehensive, analytic, logically derived and specific in its charges of SNAP benefit trafficking, an egregious violation of the Act and the regulations, as noted above.

Furthermore, the case presented by the ROD Office does not rest solely upon transaction data and printouts thereof and was indeed obtained through a formal investigative process. As summarized herein, the record contains a comprehensive array of documentation and analytical work well beyond the data presented in the Charge Letter. The transaction data is indeed factual and specific, the existence and accuracy of which is not in dispute; redundant systems confirm numerous data points for each transaction including the date, time, store authorization number, terminal ID, amount transacted, prior balance and other particulars. It is worthwhile to restate as well that, as noted above, in appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed; Appellant must provide a preponderance of evidence 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. In the absence of compelling information/documentation weighed in comparison to that provided by the ROD Office, the evidence preponderates in favor of the ROD

Office's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

It should be noted as well that while the ROD Office is required to consider and evaluate all evidence and responses that are provided by the retailer in accordance with 7 CFR § 278.6(c), the agency is under no obligation in the determination letter to expound, point-by-point, on every contention or piece of evidence presented. The Determination Letter clearly states that consideration was given to the information and evidence available to the ROD Office and to the replies made by the Appellant. After an evaluation of all information, the ROD Office determined that the violations cited in the charge letter had occurred at the firm. Implied in the letter is the determination that the evidence or response by the Appellant was either not credible or was insufficient to prove that trafficking had not occurred. While the determination letter may not have been as comprehensive as the Appellant would prefer, this review finds that due process was appropriately provided and that there was no negligence on the part of the ROD Office with regard to the manner in which it explained its disqualification decision.

Lastly, SNAP authorization is an administrative privilege, granted upon initial and continued proof of eligibility and compliance with the governing rules and regulations, and not an unencumbered right or entitlement, and does not extend said privilege in perpetuity when a firm is at least once granted a license to participate. USDA has the obligation to safeguard the public's trust and financial interest and labors to do so by operating the program in accord with the statute enacted by Congress and the regulations promulgated by USDA to implement the provisions thereof. Within this context, while due process is honored, the agency is not burdened with proving to Appellant's satisfaction that FNS has correctly imposed the sanction at issue, but rather it is Appellant's burden to demonstrate that it has not engaged in SNAP-benefit trafficking by presenting a preponderance of evidence of same. As such, contentions that the agency hasn't proven its case are a largely irrelevant and ineffective means by which to demonstrate that Appellant has not engaged in violative activity. While errors on the agency's behalf are indeed relevant and must be addressed, corrected and can result in a reversal during administrative review, an Appellant must focus a substantial amount of its probative efforts on explaining why the transaction activity at issue is in fact not due to SNAP-benefit trafficking.

With regard to contention 3 above, it is common that firms committing SNAP-benefit trafficking also conduct a considerable amount of legitimate business; the ROD Office's Charge Letter does not assert, nor is the ROD Office required to demonstrate, that all SNAP transactions conducted at the Appellant firm were trafficking transactions or that even most were. The Charge Letter contains 134 transactions in Attachment 3 alone; one instance of SNAP-benefit trafficking is sufficient to warrant permanent disqualification. There is no minimum amount of SNAP-benefit trafficking that is allowable under the regulations; any/all trafficking is considered serious and egregious violative activity. Even the smallest transactions in Attachment 3 were multiple times the average SNAP transaction in a small grocery store in the state of Idaho during the analysis period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).



The Appellant firm provided product purchase receipts/invoices in support of its reply to the Charge Letter and in its review request. These were tabulated and the results are summarized below. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

As can be seen in the above table, the firm's invoices fall dramatically short of justifying SNAP sales, which were multiple times the above total. Allowing for a 100% markup (doubling of the invoice amounts) the firm's invoices fall short of fully supporting SNAP redemptions.

Appellant also provides a copy of an Excel spreadsheet containing what is said to be primarily food purchases, although it is noted that the totals reflect receipts that also contain purchases of ineligible items. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Nonetheless, Appellant's case rests primarily on the rationale that credit account activity explains the transactions contained in the Charge Letter; this will be discussed in greater detail below.

In regard to contention 4 above, Appellant's reply to the Charge Letter and its request for review rely heavily upon a credit rationale; accordingly, documentation in the record related to credit account activity was carefully analyzed by the ROD Office; several households' SNAP activity was examined and the results summarized in the record. Several inconsistencies and anomalies are identified with the credit ledger documentation provided by Appellant. Appellant notes that when a purchase on credit was made it would enter the customer's identifying information into a notebook, along with the amount owed; however, the ledger documentation provided by Appellant in reply to the Charge Letter (and also in support of the review request) included no identifying information other than the customer's SNAP Household Number. This is highly unorthodox; it is unusual that a credit ledger reflects only the household number and only the last four digits of this 7-digit number, exactly as they appear in the Charge Letter, which is typically not accessible to the retailer (until after receipt of the Charge Letter, of course). Only the card number (a 16-digit number) is typically visible on SNAP benefit cards (such is the case for the State of Idaho), which is to be distinguished from the household number which is primarily an internal tracking number used by states and by the agency. Ledgers typically reflect names and/or nicknames and occasionally the SNAP card number, as this is how customers are typically known to retailers (not by the last four-digits of otherwise unknown household numbers). Again, it is not clear how Appellant could have obtained household numbers for all of these customers, other than from the Charge Letter. This constitutes substantial evidence that the ledger was created in response to the Charge Letter.

Moreover, conspicuously missing from the ledger are running balances that tell the clerk/store personnel how much the customer owes at any given time, which is typically a primary function of a credit ledger; the clerk would be required to recalculate the balance each time a payment is made to confirm the amount still owed. This tends to indicate that the ledger was not a tool used to track customer debt but was produced after receipt of the Charge Letter to correspond to Charge Letter transactions. Further, the firm does not provide itemized receipts of what was obtained in exchange for credit. Additionally, ledger entries in many cases appear when SNAP

households had the most benefits in the SNAP accounts, as opposed to when they had the least, indicating that there was little/no need to purchase items on credit. Some households were extended credit months prior to receiving SNAP benefits, which is also highly unusual in credit account schemes. It is noted that none of the customer letters mention having been extended credit and none make any reference to their respective household numbers, which was the sole means by which Appellant kept track of credit accounts, according to the documentation it provided. Appellant notes that credit was extended to non-SNAP customers as well, but provides no evidence or documentation thereof. As such, and in addition to the foregoing considerations, the record as a whole preponderates toward a conclusion of SNAP-benefit trafficking, not credit purchases.

Additionally, Appellant contends that customers paying credit accounts would first pay off previous charges in one debit and conduct a second transaction to make an additional purchase. However, while the time lapse between several transaction sets in Attachment 1 approximately comports with the contention, there are many with which it does not comport.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is questionable, moreover, that a second purchase made on the same day as account payoff would also be entered on the credit ledger; there is little reason to make a ledger entry for a purchase that does not need to be remembered or collected later, there being no debt to track as the purchase is entered and paid at the same time, other than to reconcile the ledger with the Charge Letter.

The ROD Office notes that several of the transactions in Attachment 1 are simply too rapid to be plausible, given Appellant's logistical wherewithal and lack of rapid throughput equipment such as price scanners, conveyor systems, order separators, bagging carousels, etc.

Similarly, Appellant contends that Attachment 2 transactions resulted from customers not knowing their SNAP balance and conducting an initial transaction to obtain the account balance; however, multiple debits are not necessary to obtain a remaining balance. Moreover, to the extent Appellant relies on its credit rationale to explain Attachment 2 transactions, the contentions associated therewith are weakened by the considerations noted in the foregoing.

Attachment 2 contains instances in which SNAP customers depleted SNAP accounts to within pennies of a zero balance and/or depleted balances during the first week following benefit issuance. It is highly implausible that customers would desire, or be able, to regularly conduct large transactions which deplete accounts to within pennies of a zero balance. A particular combination of groceries priced in particular ways is required in order to arrive at preplanned totals, is difficult to do without a calculator and, as such, is very uncommon. The likelihood that these transactions were the result of the legitimate sale of eligible foods only is extremely small. Additionally, a government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 79 percent of a household's allotment remains unspent. After seven days 41 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 79 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Depleting one's entire allotment in one or two days during the first week following benefit issuance, in a single large transaction or in a series of high cumulative

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<sup>1</sup> Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Final Report. Prepared by Mathematica Policy Research for the Food and Nutrition Service, USDA, February 2011.

transactions in a short period of time, especially in a moderately-stocked small store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to divert attention to signs of same.

With regard to contention 5 above, it is noted that the owner, on August 19, 2014, signed a FNS-252, SNAP Application for Stores certifying thereby that the owner read, understood and agreed with the conditions noted therein which included the following statement: "I accept responsibility on behalf of the firm for violations...including...:

- Trading cash for SNAP benefits (i.e. trafficking)
- Accepting SNAP benefits as payment for ineligible items
- Accepting SNAP benefits as payment on credit accounts or loans (emphasis added)
- Knowingly accepting SNAP benefit payments from people not authorized to use them.
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by Federal, State or local agencies..."

Additionally, upon authorization the firm was sent a standard authorization package containing, among other information, a cover letter stating the following:

#### Training

- The video and booklet in this package explain the Supplemental Nutrition Assistance Program rules.
- As the owner of the store, **you are responsible** for carefully reviewing the Program rules and making sure all of your employees fully understand these rules. Failure to follow the rules can result in disqualification, fines, civil, and/or criminal action.
- The training guide and DVD are available in English and Spanish.
- At the FNS website, you can also view the video in English or Spanish and download training guides: <http://www.fns.usda.gov/snap>
- A copy of current SNAP regulations are available online, at <http://www.fns.usda.gov/snap/retailers/store-training.htm>

#### Enclosures:

- Supplemental Nutrition Assistance Program Permit
- SNAP Training Guide for Retailers and training video
- Report Abuse of the SNAP Poster – **MUST BE POSTED IN YOUR STORE**
- We Welcome SNAP EBT Customers Window Sticker and Poster
- Using SNAP Benefits Poster
- Do's and Don'ts for Cashiers/Penalties for Violations of SNAP (Double-Sided card)
- EBT Fact Sheet
- List of WIC State Contacts

From the “SNAP EBT Do’s and Don’ts” card (FNS-136, included in the authorization package):  
“Do not accept SNAP benefits(EBT) as payment on credit accounts.”

From the SNAP Training Expectations document provided at authorization:

**At a minimum an acceptable SNAP training program includes:**

1. **Thorough review of FNS training materials and Program rules.** A SNAP training guide and video have been enclosed with this notice. These materials can also be found on-line at <http://www.fns.usda.gov/snap/retailers-store-training-information>. Program rules are defined under Title 7; Subtitle B; Chapter II; Subchapter C – Food Stamp and Food Distribution Program of the Electronic Code of Federal Regulations, Part 278 and are also found on-line at the link above.

“Using SNAP Benefits” poster:

SNAP benefits may not be used to pay a credit account.

From the SNAP Training Guide for Retailers available in both English and Spanish:

SNAP customers must pay for their purchases at the time of sale. You may not accept SNAP benefits as payments on credit accounts. You may not hold your customers’ SNAP EBT cards or card account information at your store for future use.

Thus Appellant was provided multiple and redundant resources through which a thorough knowledge of program rules and requirements could be readily obtained; information noting that SNAP benefits may not be accepted as payment on credit accounts was contained not only in the DVD/CD but in the written materials as well. Nonetheless, Appellant has not provided a preponderance of evidence demonstrating that the transactions contained in the Charge Letter were more likely due to credit account activity; the evidence more substantially supports a conclusion that the transaction activity at issue was due primarily to SNAP benefit trafficking.

In regard to contention 6 above, as noted, none of the 13 customer statements provided make any reference to credit accounts nor the customer’s SNAP household number, which is how Appellant identified customers and associated them with credit amounts owed. The statements do little to support Appellant’s credit rationale as an explanation for the activity detailed in the Charge Letter.

Regarding contention 7 above, the issue of hardship worked upon retailers or SNAP clients is not a consideration under the statute or regulations in decisions to disqualify firms due to SNAP-benefit trafficking. The only alternative to permanent disqualification, once trafficking is established, is to impose a trafficking civil money penalty in lieu of permanent disqualification. As noted, in order for this alternate penalty to be considered, a retailer must provide sufficient evidence demonstrating that the firm had established and implemented an effective compliance policy and program to prevent violations prior to said violations, as stipulated in § 278.6(i).

Appellant did not timely request consideration for same and did not provide such evidence and, accordingly, this alternate penalty was correctly withheld.

With regard to contention 8 above, it should be noted that a warning letter is not a statutory or regulatory prerequisite to a disqualification: the presence of a prior warning may in some cases increase the sanction imposed on a firm (see §278.6(e)(2), (3)(i) & (ii), (4) and (6)), while the lack of a warning does not decrease a sanction properly imposed or prevent the imposition of such a sanction. Additionally, departmental and agency investigators routinely determine the extent/severity of violations before referring cases to ROD Offices for administrative action; ROD Offices then again evaluate the nature and extent of violations in determining the appropriate administrative action; these standard procedures are seen to have been likewise followed in the present case. Thus, Appellant was duly notified of the violations in accordance with all pertinent provisions of the statute and regulations.

The record as a whole is sufficient to show that trafficking by the Appellant firm is more likely to have occurred than not to have occurred (as has been discussed in detail), the evidentiary standard required in this case and the same as that employed in all agency administrative reviews of adverse actions, as noted above (top of page 1). No other evidence is required in order for the ROD Office to impose a permanent disqualification for trafficking in full accordance with the Act and the regulations. While a lack of intent to violate cannot serve as a basis to reverse the sanction in the present case, there being no provision in the Act or the regulations permitting/requiring the withholding of an otherwise correct sanction in cases where trafficking can be shown to be unintentional, the record contains substantial evidence that Appellant, either through its ownership, employees or both, willfully engaged in the trafficking of SNAP benefits; SNAP benefit trafficking typically implies intent.

With regard to contention 9 above, while the commendations are indeed noteworthy, there is no provision in the statute or regulations requiring or allowing consideration of same as a mitigating or exculpatory factor in decisions to impose a disqualification due to SNAP-benefit trafficking.

## **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

## **RIGHTS AND REMEDIES**

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

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

DANIEL S. LAY  
Administrative Review Officer

May 1, 2018