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

A & M Grocery,

Appellant,

v.

Case Number: C0200716

Retailer Operations Division,

Respondent.

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 A & M Grocery (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 15, 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). Appellant did not reply 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 12, 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).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 2).

APPELLANT'S CONTENTIONS

In Appellant's written request for review dated September 12, 2017, it was argued that:

1. The ROD Office's erroneous conclusion that trafficking occurred was based on a mere six-months of data, with no additional or further investigation. The ROD Office has not provided a fair preponderance of evidence that Appellant has engaged in trafficking or a basis for disqualification under 278.6(d). The use of EBT records in sole support of what is claimed to be a serious unlawful activity is inadequate. There are no definitive factual allegations of why the transactions are indicative of trafficking in the firm type operated

by Appellant. The transaction patterns referenced in the Charge Letter are not unusual, irregular nor inexplicable. The most recent store visit to the firm should be reviewed; this will show exactly the status of the operation of the firm, which is that of a viable grocery store. The ROD Office has failed to state Appellant's firm type, and the statistical analysis applied thereto has been used erroneously.

2. As there are no specific violations committed by individual personnel of the firm and there has been no prior action taken by FNS to warn the firm about the possibility that violations are occurring, the only remaining basis for disqualification from SNAP is other evidence that shows the firm's intent to violate the regulations. However, there is no evidence of the firm's intent to violate the regulations.
3. SNAP sales comprise 20% of the firm's total sales and provided the income necessary to keep the business profitable. Appellant would not have jeopardized this source of business and livelihood by engaging in the illegal activity charged.
4. The Owner of the firm works in the store daily, personally overseeing SNAP purchases. The Owner has been in this business since 1994 and has been SNAP-authorized since 2000. The firm has an exemplary record from 2000 through 2017, which constitutes evidence of its compliance with the law and the training and supervision of its employees.
5. Appellant requests a civil money penalty in lieu of a disqualification; a disqualification will work a hardship upon SNAP customers. The firm is a purveyor of Hallel food in the area; there were no other similar providers and as such hardship to the community will result. The closest supermarket is approximately several blocks away. There are many multi-story complexes and numerous large and multi-family houses within a two-block radius. There was a great need in the neighborhood to have access to infant formula, eggs, milk, baby food, cereal, bread juice and other infant and child care items. It is located in a busy neighborhood with schools, churches, community centers, child care centers and homeless shelters which bring parents to the store on a daily basis before and after school.
6. Appellant has trained its employees concerning the SNAP and the prohibitions against sales of ineligibles and exchanging cash for benefits.
7. Regarding Attachment 1 to the Charge Letter: regular customers would often come to the store to place large grocery orders, pay for said orders and then purchase additional items, which they cannot do at a supermarket. The store permitted customers who do not have vehicles to make several trips in order to complete their purchases. The store sells sandwiches and deli meats for breakfast, lunch and dinner, requiring customers to make more than one trip per day to the store. It is unknown by the agency what portion of Attachment 1 was exchanged for cash, if any. Multiple purchases are not prohibited by any rule or regulation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
8. Regarding Attachment 2, many of these purchases are the result of the amount being the remaining balance in the customer's food stamp account. The firm was well-stocked with staple food inventory specifically designed to accommodate SNAP customers. All transactions are the result of large orders. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Many customers buy in bulk to avoid going out in uncomfortably warm weather. Also, baby food items are expensive with cans of Enfamil selling at $20.00, $24.99 and $34.99 per container, which is a common item sold at the store. It is patently ridiculous that after years of participation in the SNAP that Appellant would risk permanent disqualification

for the sum 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Here too it is unknown by the agency what portion of that amount might have been exchanged for cash, if any.

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 May 28, 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 500 square feet of store space.
- No optical scanners.
- No shopping carts or baskets.
- No night window used.
- Prices in standard retail variations of $.x9. Photos: 2, 6, 8, 10, 13, 15, 18, 29 and 32.
- One checkout area, one cash register. Approximately 1.5 X 2.5 feet of check-out counter space surrounded by candy, tobacco products, housewares, over-the-counter medicines, health and beauty products and other non-food items. Photos: 3, 13 and 30.
- One card reader.
- No phone orders.
- No delivery offered.
- No transaction rounding.
- Most expensive items:
    - Deli turkey - $7.99 per pound.
    - Deli cheese - $5.99 per pound.
    - Deli pastrami - $8.99 per pound.
    - Deli ham - $6.99 per pound.
- *All questions above were completed in collaboration with store personnel.*
- The firm sold tobacco and tobacco-related products, mobile phone accessories, health and beauty products, paper goods, cleaning supplies, clothing and other non-food items.
- Kitchen/food preparation area present. Prepared food entrees advertised on marquee. Photos: 6, 10, 15, 19 and 21.
- Hot food sold.
- No dining area.
- Deli section present: prices posted for items; prepared salads and made-to-order sandwiches sold.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Typical convenience store layout and inventory. Photos: 2, 4, 19, 20, 27 and 32.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of $.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1.5 X 2.5 feet of check-out

counter space) surrounded by candy, tobacco products, housewares, over-the-counter medicines, health and beauty products and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of New York during the analysis period was $8.83, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, the SNAP Office's Charge Letter dated August 15, 2017 presented Appellant with attachments containing numerous transactions said to establish clear and repetitive patterns of unusual, irregular and inexplicable activity. The letter continued, "Based on this information, we are charging your firm with trafficking, as defined in section 271.2 of the enclosed SNAP regulations." Thus the letter asserts that that the transaction activity at issue constitutes evidence of SNAP benefit trafficking, which is defined as the exchange of SNAP benefits for cash or consideration other than eligible food. As noted above, (page 2) 7 CFR § 278.6(a) provides that the agency may disqualify an authorized retail food store if the firm fails to comply with the Food & Nutrition Act of 2008, as amended; such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data or *evidence obtained through a transaction report under an electronic benefit transfer system (e*mphasis added). During this review, if the transaction activity contained in the Charge Letter, along with the ROD Office's additional analyses, is found to constitute a preponderance of evidence of SNAP benefit trafficking (which is affirmed below), the permanent disqualification determination made by the ROD Office is to be sustained. Appellant must demonstrate that SNAP benefit trafficking did not occur. In the absence of a preponderance of evidence presented by Appellant, demonstrating that the sale of SNAP-eligible food accounts for the transaction activity, SNAP-benefit trafficking has been shown by the record to account for the activity. Appellant asserts that the Charge Letter does not constitute adequate evidence of trafficking. However, the record is not limited to the information contained in the Charge Letter, as noted in the following. Further, Appellant does not demonstrate that the sale of eligible food more plausibly accounts for the transaction activity detailed in the Charge Letter and in fact presents little evidence of same, other than argumentation.

Charge Letters are not required by regulation or agency policy 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 asserts that the substance of the ROD Office's case against the firm is derived from data only and implies that there were no independent witnesses to affirm the trafficking allegations. As noted, 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 (convenience stores, in this case) in the state of New York. 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 May 28, 2017. These documents reflect the firm to have been a typically-stocked convenience store. The firm also maintained a substantial inventory of prepared, ready-to-eat food and accessory food items (candy, beverages, etc.), which is typical of convenience store stock.

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. 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 Appellant 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. However, as noted in the ROD Office's Determination Letter, the firm did not reply to the Charge Letter. After an evaluation of all available information, the ROD Office determined that the violations cited in the charge letter had occurred at the firm. 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 indeed 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.

Regarding contention 2 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, 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.

Contention 3 above contends that Appellant would not have engaged in trafficking due to the firm's income derived from SNAP sales; however, the assertion provides little evidence contradicting a trafficking conclusion and substantially begs the question of whether or not trafficking occurred in the present case. It is common that firms found to have engaged in trafficking also conduct some level of legitimate SNAP business. It is not necessary for the ROD Office to demonstrate that the firm engaged in SNAP-benefit trafficking only and conducted no other SNAP business or did not also sell eligible food items in exchange for SNAP benefits.

In regard to contention 4 above, Appellant notes that this case represents the firm's first and only charge of SNAP violations; however, a record of program participation with no previously or subsequently documented violations does not constitute valid grounds for dismissing the present serious charges or for mitigating the impact of the violations upon which they are based. There is no provision in the Act, regulations or agency policy that reverses or reduces a sanction based upon a lack of prior and/or subsequent violations or assurances of future compliance by a firm and its owners, managers and/or employees; likewise, sanctions for prior violations are not prerequisite to sanctions due to later violations. Moreover, prior sanctions may precipitate an increase in the severity of a later sanction (see §278.6(e)(6)). Further, as noted above, the Food & Nutrition Act of 2008 provides that a store's disqualification "*shall be* (emphasis added) permanent upon ... the first occasion of... trafficking."

Regarding contention 5 above, 7 C.F.R. § 278.6(f)(1) of the SNAP regulations provides for such assessments in cases where less-than-permanent disqualifications would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this same provision also stipulates the following specific exception to such considerations: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification." Therefore, the "hardship" civil money penalty provision (7 C.F.R. § 278.6 (f) is not applicable in the present case, beyond its stipulation that hardship is not a consideration in permanent disqualifications.

With regard to contention 6 above, to the extent Appellant may imply a request for a trafficking civil money penalty, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a said penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated August 15, 2017, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "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 (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

In regard to contention 7 above, as noted in the foregoing, the ROD Office notes that the firm was categorized as a convenience store; this review affirms that assessment to be correct and appropriate. While there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 1 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this

store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible. Multiple transactions over a short period of time, especially of high dollar value, are very suspicious because they are typical of stores and SNAP customers which are attempting to diminish attention to signs of SNAP-benefit trafficking. Moreover, the record further reflects that Appellant's number of repetitive transactions during the analysis period was multiple times that of five nearby SNAP-authorized stores (all convenience stores from just over 50 feet to less than one-third of a mile from the Appellant firm). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically-stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

Appellant notes that the firm allows customers to buy additional items and that supermarkets do not allow same. The contention is unclear; supermarkets are not prevented from allowing repetitive purchases and it is very uncommon for them to impose limits on same. All of the five comparable stores referenced above are comparably stocked, four appear clearly better-stocked; four of the five also sell deli sandwiches. There is little reason to conclude that only Appellant's customers would routinely make large and repetitive SNAP purchases. Appellant asserts that the ROD Office does not identify which of the Attachment 1 transactions were trafficking transactions, but offers very little evidence *any* were not. The ROD Office's Charge Letter presents all transactions as violative in nature and, in the absence of any compelling rationale to the contrary (no reply was provided in this case), had no option other than to determine that all were in fact SNAP-trafficking transactions.

Regarding contention 8 above, as noted in the foregoing, the average SNAP transaction in a convenience store in the state of New York during the analysis period was $8.83; transactions in Attachment 2 are multiple times this amount. Similar to Attachment 1, Appellant's number of excessively large transactions during the analysis period was multiple times that of five nearby comparable and/or better-stocked firms (firms within approximately 50 feet to under one-third of a mile). No information was provided in reply to the Charge Letter and no compelling evidence has been presented in support of the review request to demonstrate that these transactions were more likely the result of the acceptance of SNAP benefits in exchange for eligible food items. No evidence or compelling rationale is provided to explain why customers would make large purchases at a typical convenience store; nor does the record provide any explanation regarding why other similarly or better-stocked convenience stores in the immediate area have multiple times fewer such transactions compared to the Appellant firm. The ROD Office notes that the Appellant firm provided no shopping carts or baskets with which customers could transport large purchases to the small checkout counter or to waiting transportation. Appellant provides no explanation of same.

Additionally, the ROD Office conducted an analysis of household shopping patterns and found that a sample of customers conducting Charge Letter transactions were also shopping at much better-stocked super stores, supermarkets, large grocery stores and medium grocery stores on or

about the same day, calling into question what these customers could obtain at Appellant's typically-stocked convenience store that they could not obtain at the better-stocked and most likely more competitively-priced stores (super stores, supermarkets and grocery stores are typically the most competitively-priced firms in a given area).

Appellant states that the firm sells infant formula and baby food; however, other convenience stores typically also sell such items; moreover, SNAP households with infants and young children are categorically eligible for WIC benefits, which includes formula and baby food. Thus SNAP customers tend to use WIC benefits, not SNAP benefits, in order to obtain such items. Nonetheless, no infant formula or baby food was offered for sale at the Appellant firm on the day of the store visit.

The ROD Office notes that, at the time of the sanction decision, there were 64 SNAP-authorized stores within a half-mile radius of the Appellant firm, including two super stores, three supermarkets, two large grocery stores, seven medium grocery stores, 21 small grocery stores, six combination grocery/other stores and 24 other convenience stores. The Appellant store was clearly not the only store in the immediate area offering food items to SNAP customers; as noted above, it was clearly not the best-stocked firm in the area and it was clearly not the only store being visited by Appellant's customers.

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 30th 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 April 24, 2018
Administrative Review Officer