

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

Ameer 99 C,

Appellant,

v.

Case Number: C0213932

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that 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 Ameer 99 C (Appellant) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Ameer 99 C on February 7, 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

In a letter dated December 10, 2018, the Retailer Operations Division informed the Appellant that Ameer 99 C was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

The Appellant did not respond to the charges outlined in the December 10, 2018 Charge Letter. After considering the evidence in the case, the Retailer Operations Division issued a Determination Letter dated February 7, 2019, informing the Appellant that Ameer 99 C was

being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked February 12, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated February 19, 2019.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 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. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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, inter alia:

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

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, inter alia:

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

7 CFR § 278.6(f)(1) states, inter alia:

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, inter alia:

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) states, inter alia:

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

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

SUMMARY OF CHARGES

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

- There were multiple purchase transactions made too rapidly to be credible;
- There were multiple transactions made from individual benefit accounts within a set period of time; and
- 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 brief summary of the 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 specifically referenced herein.

In the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- There is no evidence to support the charges outlined in the Charge Letter. To establish violations of the SNAP regulations, the “government must show by admissible evidence that SNAP benefits were accept by a vendor for cash”. In the instant case, the government fails to meet its burden. The store owners have no intentions of ever benefiting from any violations of the SNAP.
- This is the first time that allegations of SNAP violations have been brought against the Appellant. The Appellant has no history or prior violations of the SNAP.
- The store owners depend upon the income from this business.
- The Appellant requests that FNS reconsider its decision to permanently disqualify the firm from participation in the SNAP.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Ameer 99 C as a convenience store on September 24, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 4, 2018 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 3,500 square feet in size with approximately 400 square feet of additional food storage outside of public view;
- Five shopping carts and fifteen hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Limited checkout counter space;
- No optical scanners;
- 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, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;

- The four most expensive foods items in stock were Enfamil infant formula at \$19.99 per 12.5 ounces; Klim at \$19.99 per 3.52 pounds; Elecare infant formula at \$14.99 per 14.1 ounces; and Pepsi at \$16.99 per case (12.78 liters);
- No fresh or frozen meats, poultry, or seafood in stock;
- Deli meats and cheeses were not sold by the pound;
- Hot foods were not sold;
- Meat items included units of canned fish, canned/potted meat, and eggs;
- Dairy included milk (cow and coconut varieties), cheese, and margarine;
- No fresh produce;
- Other staple foods available for purchase include such items as juice, pasta, rice, loaf bread, cereal, flour, buns/rolls, baking mix, tortillas, and canned goods;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, coffee, spices/seasonings, sugar, and condiments; and
- Ineligible nonfood items included health and beauty items, paper products, household cleaning supplies, housewares, gift items, souvenirs, party goods, clothing, and pet food.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household 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 the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant's contentions did not outweigh the evidence. 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. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Multiple Transactions Made Too Rapidly to be Credible (Charge Letter Attachment 1)

This Charge Letter Attachment documents 12 sets of transactions (24 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that met the parameter of this Scan. Ameer 99 C processed 12 sets of transactions, with the second transaction **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In considering the time required to process a legitimate purchase and the numerous steps involved, including the cashier's handling of individual items to determine the price which can involve manual keying of amounts, bagging the items for carry out, and processing the transaction, these multiple purchase transactions were made too rapidly to be credible and is suggestive of trafficking.

The Appellant contends that there is no evidence to support the charges outlined in this Charge Letter Attachment. To establish violations of the SNAP regulations, the "government must show by admissible evidence that SNAP benefits were accept by a vendor for cash". In the instant case, the government fails to meet its burden. The store owners have no intentions of ever benefiting from any violations of the SNAP.

Frequent and large transactions conducted rapidly in order to purchase eligible foods at Ameer 99 C are highly unlikely given the store's logistical wherewithal and store stock. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. In light of the above, consider the time required to process a legitimate purchase and the steps involved:

- Unloading items onto the checkout counter;
- Separating eligible items and ineligible items;
- Weighing individual items if sold by weight;
- Handling by the cashier of individual items to determine the price;
- Entering the prices into the cash register, once for eligible foods and once for ineligible items;
- Bagging the items for carry out;
- Handing the customer bagged items to make room for more food items the customer is bringing to the counter;
- Informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable);
- Pressing the "SNAP transaction key" on the point-of-sale device;
- Swiping the card;
- Entering by the customer of the required PIN;
- Cashier entry of the purchase amount;
- Confirming customer has a sufficient benefit balance;
- Processing and approval of the transaction by the system;
- Printing out register and EBT receipts;
- Accepting an alternate form of payment for nonfood items and possibly handling cash change; and
- Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be done in succession, one will readily surmise that performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between the transactions. Limited counter space adds additional time to transactions. Ameer 99 C processed orders at rates **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, yet the firm had only a small checkout counter and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Ameer 99 C are highly unlikely given the store's logistical wherewithal and store stock. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), with little checkout counter space, processed rapidly is implausible. The Appellant provided no evidence to support its claim that the SNAP transactions included in Attachment 1 are the result of legitimate sales of staple foods and not the result of SNAP trafficking.

Repeat Transactions by the Same Household (Charge Letter Attachment 2)

This Charge Letter Attachment documents 27 sets of transactions (63 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the Charge Letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Ameer 99 C 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. The second, third, and fourth transactions in each set are too large to consist of forgotten items.

The Appellant contends that there is no evidence to support the charges outlined in this Charge Letter Attachment. To establish violations of the SNAP regulations, the "government must show by admissible evidence that SNAP benefits were accept by a vendor for cash". In the instant case, the government fails to meet its burden. The store owners have no intentions of ever benefiting from any violations of the SNAP.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Ameer 99 C is not set up to provide

for all of one's food needs with no fresh or frozen meats, poultry, or seafood, no fresh produce, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area.

The store visit report and photos of October 4, 2018 indicate that there were 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, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. In addition, a good portion of the store's square footage is used to stock ineligible nonfood items such as health and beauty items, housewares, paper products, clothing, household cleaning supplies, gift items, etc. It is irregular for convenience stores to have purchases such as those cited, especially when Ameer 99 C stocks only a few high priced food items so the majority of the food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Ameer 99 C are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Ameer 99 C, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 178 SNAP authorized retailers located within a 1.0 mile radius of Ameer 99 C that can meet the nutritional needs of SNAP customers. Several of these area authorized SNAP stores are larger than Ameer 99 C and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Ameer 99 C 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 does not appear to be an explanation for Ameer 99 C's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

No banking records, no Federal business tax submissions, or state sales tax forms were advanced to support that the Appellant was not trafficking. The owners provided no recipient affidavits to attest to shopping behaviors of flagged households at the Appellant. No vendor invoices of eligible foods were provided to support the Appellant's SNAP redemption volume. No itemized cash register tapes were advanced for review.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 2 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Purchase Transactions (Charge Letter Attachment 3)

This Charge Letter Attachment documents 397 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in Bronx County, New York. During the review period, the average transaction amount for a convenience store in Bronx County, New York was \$8.51. The average transaction in Attachment 3 is more than 8.5 times larger than the average purchase amount for this store type. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the store's inventory. There were no fresh or frozen meats, poultry, or seafood and no fresh produce in stock. Most of the food products in Ameer 99 C consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that there is no evidence to support the charges outlined in this Charge Letter Attachment. To establish violations of the SNAP regulations, the "government must show by admissible evidence that SNAP benefits were accepted by a vendor for cash". In the instant case, the government fails to meet its burden. The store owners have no intentions of ever benefiting from any violations of the SNAP.

With regard to these contentions, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as Ameer 99 C to have purchases like those included in Attachment 3 to the Charge Letter. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The FNS store visit report and photos of October 4, 2018 show that Ameer 99 C offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, no fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space in which to conduct transactions. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 178 SNAP authorized retailers located within a 1.0 mile radius of Ameer 99 C that can meet the nutritional needs of SNAP customers. Several of these area authorized SNAP stores are larger than Ameer 99 C and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Ameer 99 C have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Ameer 99 C does offer some staple food items, SNAP recipients are already shopping at other larger SNAP

retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

5 U.S.C. § 552 (b)(7)(E).

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Ameer 99 C compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Ameer 99 C **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 convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

The burden to disprove trafficking rests with the Appellant. In this matter, insufficient evidence was advanced to support the contention. No itemized cash register receipts were provided. No vendor invoices to document eligible items sufficient to cover the Appellant's SNAP redemptions were provided. No customer statements were provided to explain the shopping behaviors of flagged households at the Appellant. No Federal or state business tax submissions were advanced. No business banking records were provided.

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 the Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those 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 the Retailer Operations Division's determination. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

No Prior Violations

The Appellant contends that this is the first time that allegations of SNAP violations have been brought against the store. The Appellant has no history or prior violations of the SNAP. However, a record of participation in the SNAP with no documented previously violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

Financial Hardship

The Appellant contends that the store owners depend upon the income from this business. However, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Reconsideration of Imposed Penalty

The Appellant requests that FNS reconsider its decision to permanently disqualify the firm from participation in the SNAP. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

As previously indicated, the February 7, 2019 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated December 10, 2018 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were

in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the 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. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Ameer 99 C is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you 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 thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

LORIE L. CONNEEN
Administrative Review Officer

May 1, 2019