

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

**Any Item 99 Plus,**

**Appellant,**

**v.**

**Case Number: C0208780**

**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 Any Item 99 Plus (hereinafter “Appellant” or “Any Item 99 Plus”) 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 Any Item 99 Plus on July 11, 2018.

**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 June 4, 2018, the Retailer Operations Division informed the Appellant that Any Item 99 Plus 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."

In responses to the Retailer Operations Division dated June 14, 2018 and June 27, 2018, the Appellant cited credit extension to low income families and senior citizens as the explanation for the questionable SNAP transactions that were outlined in the June 4, 2018 Charge Letter. The

Appellant wrote down the amount of each credit purchase throughout the month and totaled them when the customers received their monthly SNAP benefit allotments. The Appellant did not keep receipts of the credit purchases.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated July 11, 2018, informing the Appellant that Any Item 99 Plus 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 July 16, 2018, the Appellant 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 July 27, 2018.

### **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 November 2017 through April 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- 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 replies to the Charge Letter, in the administrative review request postmarked July 16, 2018, and in subsequent correspondences dated August 14, 2018 and August 31, 2018, the Appellant stated the following summarized contentions, in relevant part:

- The questionable SNAP transactions outlined in the Charge Letter are the result of the Appellant accepting SNAP benefits as repayments on credit accounts from low income SNAP families and senior citizens upon receipt of their monthly SNAP benefit allotments. The Appellant wrote down the amount of each credit purchase throughout the month and totaled them when the customers received their monthly SNAP benefit allotments. The Appellant did not keep receipts of the credit purchases. In support of its credit extension argument, the Appellant provided signed statements from ten customers who attested that they had been extended credit by Any Item 99 Plus when they ran out of their monthly SNAP benefits.
- A permanent SNAP disqualification will impose a hardship on the many SNAP customers who depend upon Any Item 99 Plus.
- A permanent SNAP disqualification will impose a financial hardship on the Appellant as it is dependent upon SNAP sales.
- The Appellant requests that FNS reconsider its decision to permanently disqualify Any Item 99 Plus from participation in the SNAP.
- The Appellant requests that FNS impose a civil money penalty in lieu of a permanent SNAP disqualification of Any Item 99 Plus.

## ANALYSIS AND FINDINGS

### Store Characteristics

FNS authorized Any Item 99 Plus as a convenience store on December 5, 2003. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 7, 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 2,500 square feet in size and does not have additional food storage outside of public view;
- No shopping carts and 10 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;
- No optical scanner;
- The available checkout area space was limited and had miscellaneous items stocked there;
- 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;
- The four most expensive foods items in stock were candy at \$11.99 per 5 pound bag; Menudo at \$14.99 per 2.66 kilograms; Enfamil infant formula at \$9.99 per 12.5 ounces; and coffee at \$7.99 per 7 ounces;
- Telephone orders are not taken and delivery is not available to customers;
- There were no fresh or frozen meats, poultry, or seafood;
- No deli area in which meats and cheeses were sold by the pound;
- No kitchen area and does not prepare and sell hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation;
- Frozen foods included ice cream;
- There were units of canned fish, canned shellfish, eggs, canned/potted meat, hot dogs, and meat jerky;
- Dairy included milk, cheese, and margarine;
- Infant foods included one unit of infant formula;
- No fresh produce;
- Other staple foods available for purchase included such items as juice, pasta, rice, bread, cereal, baking mix, and canned goods;

- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, coffee, spices, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty items, paper products, household cleaning supplies, household items, automotive supplies, pet food, gift items, clothing, party supplies, greeting cards, housewares, and sunglasses.

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'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.

### **Credit Transactions**

The Appellant argues that the questionable SNAP transactions listed in the Charge Letter are the result of the Appellant accepting SNAP benefits as repayments on credit accounts from low income SNAP families and senior citizens upon receipt of their monthly SNAP benefit allotments. The Appellant wrote down the amount of each credit purchase throughout the month and totaled them when the customers received their monthly SNAP benefit allotments. The Appellant did not keep receipts of the credit purchases.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser

penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

In support of its argument that the violative SNAP transactions were the result of the store extending credit to low income SNAP families and senior citizens, the Appellant provided FNS with signed statements from ten customers who attested that they had been extended credit by Any Item 99 Plus when they ran out of their monthly SNAP benefits.

With regard to the affidavits/statements provided by store customers which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits/statements may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a store customer to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any store customer affidavit provided would attest to questionable transactions being legitimate.

FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to validate that it kept records of credit extension to SNAP customers;
- The Appellant did not provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended. The customer statements provided no EBT card numbers and several of the statements included only the first name of the customer;
- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- No documents were provided to validate whether the alleged credit was paid off by cash, credit/debit card, personal check, or SNAP benefits;
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that would validate that the credit extended to each SNAP customer was done so during the review period; and
- No documentation was provided that would validate the amount of credit that was extended to each customer during the review period.

In conclusion, although Any Item 99 Plus may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

## **Repeat Transactions by the Same Household (Charge Letter Attachment 1)**

This Charge Letter Attachment documents 20 sets of transactions (48 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.

The Appellant argues that the multiple transactions made from individual benefit accounts within a set period of time are the result of the Appellant accepting SNAP benefits as repayments on credit accounts from low income SNAP families and senior citizens upon receipt of their monthly SNAP benefit allotments. However, the credit information provided by the Appellant is not sufficient to support its claim that these transactions were due to repayments of credit accounts.

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 Any Item 99 Plus 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.

A review of client shopping data for the review period shows that clients shopping at Any Item 99 Plus 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 Any Item 99 Plus, where the eligible staple 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, Agency mapping systems indicate that there are 31 SNAP authorized retailers located within a 1.0 mile radius of Any Item 99 Plus that can meet the nutritional needs of SNAP customers including 6 combination grocery stores, 12 convenience stores, 1 small grocery store, 2 medium grocery stores, 1 large grocery store, 4 supermarkets, and 5 super stores. Many of these area SNAP stores are of a comparable size or larger than Any Item 99 Plus and offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned above, SNAP customers that shopped at Any Item 99 Plus 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 Any Item 99 Plus's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Any Item 99 Plus or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This Charge Letter Attachment lists 393 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in San Diego County, California. During the review period, the average transaction amount for a convenience store in San Diego County, California was \$6.91. The average transaction in Attachment 2 is more than seven 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, no frozen fruits or vegetables, and no fresh produce. Most of the food products in Any Item 99 Plus consisted of accessory food items such as candy and soda and inexpensive staple foods such as canned and packaged goods. The frequency of high dollar purchases in the the review period calls into question the legitimacy of these transactions.

The Appellant argues that the excessively large purchase transactions are the result of the Appellant accepting SNAP benefits as repayments on credit accounts from low income SNAP families and senior citizens upon receipt of their monthly SNAP benefit allotments. However, the credit information provided by the Appellant is not sufficient to support its claim that these transactions were due to repayments of credit accounts.

The FNS store visit report and photos of April 7, 2018 show that Any Item 99 Plus offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, and no fresh produce. The 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 and no shopping carts in which to transport the large number of items required to make up these large transaction amounts. 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 31 SNAP authorized retailers located within a 1.0 mile radius of Any Item 99 Plus that can meet the nutritional needs of SNAP customers. Many of these area SNAP stores are of a comparable size or larger than Any Item 99 Plus and offer a comparable or 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 Any Item 99 Plus 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 Any Item 99 Plus 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.

The record shows that the Retailer Operations Division compared the Appellant firm, a convenience store, to other convenience stores located in San Diego County, California. During the review period, Any Item 99 Plus's SNAP average transaction amount and dollar volume were considerably higher as compared to other convenience stores in San Diego County. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These are indicators that trafficking is more likely than not occurring at Any Item 99 Plus.

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 Any Item 99 Plus 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 Any Item 99 Plus **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 limited staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

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 and the lack of shopping carts support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### **Customer Hardship**

The Appellant argues that a permanent SNAP disqualification will impose a hardship on the many SNAP customers who depend upon Any Item 99 Plus. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification 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 regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

## **Financial Hardship**

The Appellant argues that a permanent SNAP disqualification will impose a financial hardship on the firm as it is dependent upon SNAP sales. 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 Penalty**

The Appellant requests that FNS reconsider its decision to permanently disqualify Any Item 99 Plus 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**

The Appellant requests that FNS impose a civil money penalty in lieu of a permanent SNAP disqualification of Any Item 99 Plus.

In the June 4, 2018 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) 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**, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to **extend the time** within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the Appellant's response to the Administrative Review Officer dated August 14, 2018 (i.e., dated **after the ten day required timeframe** for providing documentation in support of its request for a trafficking civil money penalty in lieu of permanent disqualification), the Appellant requested consideration of a civil money penalty in lieu of permanent disqualification. However, no supporting documentation/evidence was provided by the Appellant.

The Retailer Operations Division determined that Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations. **5 U.S.C. § 552 (b)(7)(E).**

Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

## 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 Any Item 99 Plus 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

November 29, 2018