

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

**Ar Food Mart,**

**Appellant,**

**v.**

**Case Number: C0212907**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The record supports that Ar Food Mart (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). It is the decision of the USDA that there is sufficient evidence to support the permanent disqualification of Appellant as imposed by the Retailer Operations Division, from participation as an authorized retail food store in the Program, (Retailer Operations) was appropriate.

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

**AUTHORITY**

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

**CASE CHRONOLOGY**

By Charge letter dated October 22, 2018, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification.

By letter dated October 29, 2018, Retailer Operations provided previous counsel an extension to respond to November 7, 2018. On November 21, 2018, Retailer Operations provided a second extension to Appellant to respond to November 28, 2018.

Previous counsel responded to the Charge letter by emails and documents on October 26 and 29, 2018, November 2, 6, 21, 26, and 27, 2018, and December 5, 2018. Previous counsel also provided a copy of an owner-signed representation document misdated October 29, 2017.

Retailer Operations issued a Determination letter dated February 1, 2019. This letter informed Appellant that it was permanently disqualified as a retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted timely to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated February 5, 2019, current counsel appealed Retailer Operations' determination and requested administrative review. The appeal was granted by letter dated February 12, 2019. Counsel made a FOIA request by letter dated March 4, 2019. The agency's March 28, 2019, FOIA reply was delivered March 29, 2019. On April 18, counsel submitted his brief dated April 18, 2019. Retailer Operations reviewed the brief and submitted its assessment to this office on May 9, 2018.

## **STANDARD OF REVIEW**

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

## **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: “Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption.”

7 CFR § 278.6(a) states: “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.”

7 CFR § 278.6(b)(2)(ii) states: “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 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).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

### **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of April 2018 through September 2018. The patterns of transaction characteristics indicative of trafficking are:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large transactions made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

In reaching a decision, attention has been given to all contentions, including any not referenced.

- My client has kept very good records and can provide you with documentation that will prove his innocence. We just need a list of the documentation you are requesting.
- This store is located in a very low income area surrounded by apartment buildings, with a high percentage of SNAP clientele.
- He gets much of his stock from Walmart as it is cheaper than his other alternatives. The receipts he provided will reflect this.
- The owner has installed new cameras with audio capacity to document all transactions in the event that future transactions are questioned. The owner has been and will continue to be in full compliance with SNAP regulations.

- The owner was under the impression that he could not refuse service. Patrons purchase the uncooked food, which they pay for. We are providing purchase receipts, pictures of products with pricing and the cash register which identify the department number keys, and photos of signage.
- We are providing a UBS that shows large and multiple transactions.
- We have compiled as many transaction detailed receipts as possible for the time frame and numbered them to match your numbered items.
- It is likely that the presence of a Confirmation Bias exists.

## ANALYSIS AND FINDINGS

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

**Attachment 1:** Listed are 92 transactions in 32 sets of transactions conducted by 20 unique households (HHs). Transacting multiple transactions within a set time period is a method stores use to avoid high dollar transactions, and are indicative of trafficking.

Contentions:

- To the Appellants' knowledge, the store is the only retail store in the surrounding area that provides the community with such an expansive and diverse selection of grocery products. It has the added draw for non-SNAP related items like cooked food.
- The Store offers a minimum of two shopping baskets and two shopping carts for their shoppers' convenience. These permit shoppers the ability to gather a substantial amount of food and transport it from the shelves to the register without logistical difficulty.
- Submitted are affidavits from 21 SNAP customers, stating that they spend **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** at the Store during a single trip, that they utilize approximately 20% to 100% of their SNAP benefits at the Store, and that the majority conduct multiple transactions at the Store every one to two days.
- Demonstrating the Store's SNAP's customer shopping habits are clips from the surveillance monitors (from December 2018 through February 2018 [sic]) along with the corresponding register receipts.
- Often enough, the participants realize after they've made their initial purchase, that they've forgotten a grocery item or have decided that they wanted to purchase items they saw during their first trip through the store, but originally opted not to purchase.
- In other instances, multiple members of the same household will shop together and then make their purchases separately (using the same account and card) in quick succession. In other circumstances, the participants will go on a spending spree wherein they make purchase after purchase without leaving the store, or by returning after a brief absence, thereby reducing their benefits in short order.

- As a service the owner cooks the food at no charge. While the food is cooked, customers shop for more and return to the registers.
- Multiple purchases within the first 48 hours after receiving SNAP benefits is not unusual.
- Specifically, there are only two households flagged in Attachment 1 – Household No. 001 and Household No. 002. Out of the 7 transaction matrices cited in Attachment 1 conducted by Household No. 001, all but one took place between the 1<sup>st</sup> through the 10<sup>th</sup> day of the respective months. Out of the 25 transaction matrices cited conducted by Household No. 002, all but 3 took place between the the 1<sup>st</sup> through the 10<sup>th</sup> day of the respective months.
- Said shopping habits are further supported by the clips from the video surveillance footage, attached with the corresponding register receipts.
- Multiple transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** are not “inherently suspicious,” as it is not uncommon for a customer to make multiple trips to the same store on the same day.
- If these transactions are not suspicious at Walmart, they should not be viewed as suspicious under these circumstances either.

The record shows that within one mile of Appellant there are three authorized convenience stores, and within a two mile radius there are ten additional convenience stores. In addition, there is a super store located 2.17 miles from Appellant. The data shows that 40% of the HHs flagged on this Attachment transacted benefits at a super store, supermarket, or large grocery on the same day they transacted benefits at Appellant. Within two days of conducting a transaction(s) at Appellant, 75% of the flagged HHs transacted SNAP benefits at larger store types. Thus, recipients had access to, and did use their benefits at other authorized food stores. The record also contains analysis of some recipient shopping histories that are unusual.

Contrary to counsel’s contention, Attachment 1 lists transactions by 20 unique households. The HH numbers are truncated to protect the privacy of the recipients. In this case, for this state, the last three digits of flagged HH numbers primarily ended in 001 and 002. The data shows that for four of the review months, Appellant’s SNAP redemption dollar volume was highest on the first day of the month. In April 2018, Appellant’s SNAP redemption dollar volume was highest on the fifth day of that month.

The record shows that FNS conducted three onsite store visits, one each in 2016, 2017, and 2018. There were no baskets or carts noted on the 2016 store visit report. The 2017 store report listed one basket and one shopping cart. Based on the photos, the shopping cart appeared to be located in the storage area, and appeared to be for the use of store personnel. The single basket photographed was located on top of a stand-up refrigerated cooler, and was branded “**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.” There is a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** store located almost four miles from Appellant. The 2018 onsite visit listed no baskets or carts at Appellant. The advanced videos show customers collecting items in their arms and dropping them off at the checkout window the small counter. The videos do not show any baskets or carts in use by customers. The number of baskets and carts claimed by counsel is not corroborated by supporting evidence.

As to the logistics of the store, the 2018 store visit photos show that the check-out area is bounded by a framed opening with a small ledge counter. The opening at the window is fronted by two reach-in freezer chests with a narrow opening between them. This is confirmed by the submitted videos. Previous counsel stated the owner “installed new cameras with audio capacity to document all transactions in the event that future transactions are questioned.” It is not known if the owner had videos of transactions during the review timeframe. All of the videos provided are dated after the Charge letter was issued, and document events and receipts dated outside of the review period.

The owner-provided cash register receipts are not detailed by line item purchases. Rather the receipts indicate purchases by Department numbers. Some of the supplied receipts list a mixture of Department codes. The receipt department codes were identified from a supplied photo as: Dept. 11 - Food Stamp, Dept. 15 - Non-Food, and Dept. 16 - Tobacco. As all of the supplied receipts state “CASH” with a payment amount, it was difficult to distinguish what was paid with SNAP benefits, and what was paid by cash, credit, or debit. Retailer Operations conducted an analysis on some receipts with mixed department codes.

Retailer Operations determined that the receipts indicate that ineligible items were sold by Appellant in exchange for SNAP benefits. For example, two Dept. 15 items, a non-food code, totaling more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were charged to SNAP benefits on 4/5/18. This receipt corresponds to transaction 191 listed on Attachment 2. Similarly, eight Dept. 15 items, a non-food code, totaling more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were charged to SNAP benefits on 4/12/18. This receipt corresponds to transaction 492 on Attachment 2. A receipt dated 4/10/18 where Dept. 16 is used, correlates to transaction number 458 on Attachment 2. This department code was stated to be for tobacco, yet SNAP benefits were used to make this violative purchase. This evidence supports that Appellant was selling ineligible items in exchange for SNAP benefits, a violation of the SNAP regulations.

Furthermore, Retailer Operations found there were a number of questionable line items listed as SNAP purchases on the receipts, such as: 199 items at \$.04 each; 199 at \$.05 each; 199 at \$.06 each; 199 at \$.11 each; 349 at \$.03 each; 169 at \$.04 each; 299 at \$.04 each; 169 at \$.06 each; 299 at \$.05 each; and 50 items at \$.08 each. Given the quantity of items supposedly purchased (i. e. 50, 169, 199, 299 and 349) at the cent values noted; it is suspicious and unlikely that these alleged SNAP purchases were for legitimate eligible food stock. For example, on videos dated 11/5/18, there are corresponding charged receipts that show 199 at \$.05 each, and 189 at \$.05 each, with no obvious eligible food items acquired. Retailer Operations found it likely that charging these line items to recipients represented trafficking by Appellant rather than legitimate food sales.

The times noted between the transactions listed on this Attachment are not indicative of multiple purchases without leaving the store. Only three data sets were conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C); the other 29 sets were made 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Retailer Operations did not find it credible 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for Appellant to heat up wings and pizza. Therefore, the contention that SNAP recipients made additional purchases while their pizza and wings were

cooked, did not resonate as a reasonable explanation for the transaction sets listed on this Attachment.

Counsel explains the transaction sets on this Attachment as: co-shopping; households' frequently forgetting items and returning later to the store; and participants going on a "spending spree wherein they make purchase after purchase without leaving the store." Retailer Operations found that if these were valid shopping patterns, presumably the HHs listed would demonstrate similar transaction patterns at other authorized firms. Retailer Operations reviewed the transactions of the 20 HHs listed, and determined that only two of the listed HHs completed transactions at other firms that met the parameters of this Attachment. Thus, the shopping patterns advanced by counsel to explain the data sets at Appellant, were not commonly flagged at comparable firms. For example, a HH that made 23 transactions flagged at Appellant on this Attachment, had zero such transactions flagged at other stores. Another HH with nine transactions flagged at Appellant on this Attachment, had zero such transactions flagged at other stores. Thus, the data does not support that the households flagged on this Attachment displayed similar shopping patterns at other authorized firms. At such, the data is unusual and not commonplace.

Retailer Operations compared Appellant to the three closest authorized convenience stores, two of which also offered pizza products per the Hunt Brother Pizza online store locator. The three other SNAP authorized convenience stores, all located within a one mile radius of Appellant, had fewer flags on this Attachment pattern during the same time period. For example, Appellant had 32 data sets flagged, while one comparable pizza-providing convenience store had five data sets flagged, and the other comparable pizza convenience store, had four data sets flagged. The third nearby convenience store, had six data sets flagged. This data supports that SNAP recipients were not completing the same volume of set time frame SNAP transactions totaling to large dollar amounts as listed at Appellant, at other local similar-type stores.

No business bank records, or Federal or state tax submissions were provided to support that trafficking was not occurring at Appellant. As such, the owner has not by a preponderance of the evidence, demonstrated that these transactions are the result of the exchange of benefits for SNAP eligible foods rather than trafficking.

**Attachment 2:** Listed are 564 transactions conducted by 228 unique households, 5 U.S.C. § 552 (b)(7)(E). 5 U.S.C. § 552 (b)(7)(E). This is unusual.

The record supports that the firm carried non-food, SNAP ineligible inventory including: tobacco products, alcohol, automotive products, health and beauty aids, cleaning products, housewares, pet food, and clothing (hats). There was no specialty food stock noted. Hot food is not permitted to be purchased with SNAP benefits.

Contentions:

- The Inspector noted the presence of some of the other more expensive food items maintained by the Store but failed to cite them on the list of the most expensive food items in the Store's inventory. A list of the items missed by the Inspector include:

- pizza - \$10.99; bag of fish - \$29.99, shrimp - \$19.99, and jar of pig feet - \$24.99.
- Some of the bags of chicken are over \$30.00 which makes those transaction high.
  - The on-site inspection found that the Store was sufficiently provisioned to satisfy the purchase amounts listed in the Charge Letter.
  - Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods and prepared desserts at a much higher rate than traditional consumers. These purchasing habits, set against the inventory, show that the Store stocks the majority of a SNAP household's preferred needs, and that it has sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.
  - As provided in the Department's FOIA response, there were three negative RIB investigations conducted at the Store in 2017 – it is unclear if any weight has been given to these negative investigations for the purposes of the Department's investigation of alleged trafficking at the Store.
  - This evaluation is supposed to be conducted by the analyst, however, the analyst does not understand the system's capabilities and leans too heavily upon the ALERT data, often failing to account for differences in shopping habits of local participants.
  - Another issue is whether or not appropriate comparison stores have been selected to provide a baseline set of data against which to compare the Appellant's transactions.
  - The Store's operations, inventory, and clientele logistically account for the transactions. In support of the substantial inventory and innocence of the transactions conducted, the Appellants have submitted the Store's grocery product invoices for the review period.
  - Specifically, all but 7 out of the 564 transactions contained in Attachment 2 were conducted by the same two (2) households listed in Attachment 1 – Household No. 001 and Household No. 002. Unfortunately, as the Department has redacted all of the identifying information for the SNAP participants set forth in Attachments to the Charging Letter, Appellants are unable to confirm the actual amount of SNAP residents residing in said households, specifically Household No. 001 and Household No. 002.

The owner submitted vendor invoices dated from December of 2017 through November of 2018. The review period was April through September of 2018. Retailer Operations used invoices for July and August 2018 to determine a level of stock of eligible foods at Appellant. The record supports that on an October 29, 2018, Retailer Operations had a telephone conversation with the owner, his translator, and his attorney. The owner stated for the month of September 2018, he had made approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with about 5 U.S.C. § 552 (b)(6) & (b)(7)(C) derived from SNAP sales. Retailer Operations used this information, rounded up, and determined that approximately 30% of Appellant's sales were possibly attributable to SNAP participants using their benefits. According to the record, despite Retailer Operations' multiple requests for mark-up percentage information, this percentage(s) was never provided by the owner. Thus, Retailer Operations used a 40% mark-up in its assessment of the invoice evidence. Based on these estimates, Retailer Operations determined that Appellant did not submit sufficient evidence of eligible food stock to support its SNAP redemptions during the two reviewed months. As such, Retailer Operations determined that the invoices analyzed were not sufficient to explain the questionable transactions at Appellant.

Retailer Operations re-ran its analysis of invoices provided by current counsel for July and August 2018. It applied a 64% mark-up, per the National Association of Convenience Stores



average mark-up in 2016. Using this higher mark-up percentage, Appellant had enough inventory to cover its SNAP redemption amounts. Nevertheless, Retailer Operations did not find that the estimated value of the documented food inventory explained the suspicious patterns of SNAP transactions as listed on the two Attachments.

Retailer Operations determined that the three comparable convenience stores had less than half of the flagged transactions on Attachment 2 as Appellant. For example, at the two nearby convenience stores that offered pizza, one store had 137 flags, and the other had 182 transactions flagged on the parameters of this Attachment. The third convenience store had 242 flags for excessively large transactions for the same time frame, as compared to Appellant's 564. This data supports that Appellant's transactions were unusual.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient evidence was presented by a preponderance to support this argument rather than the charged trafficking. The owner provided no product-itemized cash register tapes to support legitimate food sales for the review months. The Dept. 11 code for food stamp items did not specify what was allegedly purchased. The pricing information advanced for high dollar items appeared to be primarily for bulk food packs that would be used in hot foods sales to offer smaller serving sizes. For example, it is stated that a bag of fish cost \$29.99, and shrimp was \$19.99. Retailer Operations noted that neither shrimp nor fish were listed on the onsite visit report, or visible in the FNS store photos. The list of items in the meat, poultry, fish staple food category from the onsite visit records only tuna as being available at the firm on the date of the visit. The photographed menu sign in the record shows that a single piece of fish cost \$2.99. While the firm may offer bags of fish and shrimp, Retailer Operations found it unlikely that sales of large bags of fish, shrimp, or chicken explained the unusual transactions in the Attachments. For example, Retailer Operations identified only six receipts of the approximately 180 pages of multiple receipts provided by the owner, that had a line item of \$32.99, the price of a 5-pound bag of Hunt Brother Wings. A seventh receipt, showed there was a void of that amount before totaling. Retailer Operations found that the low number of receipts with the \$32.99 line item, was a strong indicator that the sale of bags of wings by Appellant was not a common occurrence. Retailer Operations determined that bulk higher priced items did not reasonably explain the transaction totals listed in the Charge letter.

The owner submitted 21 signed customer statements from apparent SNAP recipients. Aside from information specific to each affiant, such as name, address, dollar amounts spent at the store, etc., each statement was identical. Retailer Operations conducted a search of the Oklahoma State Admin Terminal, and determined that five of the named individuals were not matched to SNAP households in Oklahoma. For example, an individual that stated she spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store, and used 90% of her SNAP benefits at Appellant, was not located in the Oklahoma State admin terminal. Further, Retailer Operations was unable to decipher one name as it was written, and could not match it as a SNAP recipient.

Retailer Operations reviewed the shopping histories of those HHs that were matched in the state data, and made SNAP transactions during the review months. Retailer Operations determined that the actual HH transaction data did not support by a preponderance, the claims made by the households matched. For example, an individual claimed she spent

5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store, and used 80% of the HH's SNAP benefits there. The data showed that during the review period, this household visited 11 other SNAP-authorized retailers within a 10-mile radius of Appellant. Of the 98 SNAP transactions completed at Appellant, the highest SNAP transaction amount by the HH was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the transaction history, approximately 30% of the HH's benefits were expended at Appellant, compared to 54% of its benefits transacted at area super stores. Another individual claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store, and used 25% of its HH benefits there. The data shows that during the review period, this household made transactions at 13 other SNAP retailers within a 10-mile radius of Appellant. Of the 21 SNAP transactions completed at Appellant, the highest SNAP transaction amount by the HH was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the transaction history, 4.9% of the HH's benefits were expended at Appellant, as compared to 82% of its benefits redeemed at area supermarkets and super stores.

Another individual claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store, and to use 80% of the HH's SNAP benefits there. During the review period, this household frequented 21 other authorized retailers within a 10-mile radius of Appellant. Of the 32 SNAP transactions completed at Appellant, the highest SNAP transaction amount was 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the transaction history, 13% of the HH's benefits were expended at Appellant, as compared to 73% of its SNAP benefits being transacted at area supermarkets and super stores. An individual claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the store, and use 20% of the HH's benefits there. During the review period, this household redeemed benefits at 15 other SNAP authorized retailers within a 10-mile radius of Appellant. This HH completed only one SNAP transaction at Appellant during the review period, in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the HH's transaction history, 0.09% of its benefits were expended at Appellant, as compared to 95% of its benefits being transacted at area supermarkets and super stores. Further, the contention that only a few households conducted the many transactions listed, is in error. As noted, 228 unique households made the transactions listed on this Attachment, not two or a few.

The USDA did conduct one single investigation at Appellant with four visits, during the period of February 2 through June 6, 2017. One visit did not include an attempt to make a violative transaction. On the other three dates, the store did not exchange ineligible items for SNAP benefits. Retailer Operations determined that the firm's refusals to sell ineligible items for benefits during the three 2017 investigative passes did not explain the unusual transactions and patterns listed on the Attachments.

FNS employs a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. The system does not conclude that trafficking has occurred. Retailer Operations staff must analyze the transaction data and assess other factors such as, the store visit report and photos, an analysis of recipient shopping behaviors, and make comparisons to comparable stores in the area. After consideration of the data and other information, Retailer Operations staff makes a determination whether the questionable transactions are more likely than not, the result of trafficking. This analytical approach is supported by the SNAP regulations at 7 CFR § 278.6(a) that allows FNS to disqualify an authorized retail food store from a finding of a violation on the basis of evidence

that may include facts established through inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, and on-site investigations.

### **CIVIL MONEY PENALTY**

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The owner failed to submit documentation to show that he met the four criteria to qualify for a CMP. Accordingly, Retailer Operations determined that Appellant was not eligible for a trafficking civil money penalty.

### **CONCLUSION**

Retailer Operations' analysis of Appellant's SNAP transaction record was the primary basis for its determination to permanently disqualify Appellant. This data, plus the shopping patterns of analyzed households, the store photos and other analyses, provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits.

Appellant provided evidence to support that it was not trafficking. However, the receipts advanced by the owner show suspicious cent amounts charged in large numbers. This evidence supported the trafficking charged. The advanced receipts also supported that Appellant did make violative sales of nonfood items in exchange for benefits. The videos did not support the claimed number of shopping baskets or carts, and were not dated during the review period.

Based on entirety of the record, and in the absence of a preponderance of evidence of the legitimacy of the transactions presented by Appellant, it is more likely true than not true that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

### **RIGHTS AND REMEDIES**

Attention is called to Section 14 of the Food and Nutrition Act of 2008 and to 7 CFR § 279.7 of the regulations with respect to applicable rights to judicial review of this decision. If judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which Appellant's owner resides or is 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

M. Viens  
Administrative Review Officer

May 22, 2019