

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

**AVP Grocery Store,**

**Appellant,**

**v.**

**Case Number: C0210207**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against AVP Grocery Store (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on August 31, 2018.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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**

By letter dated July 11, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in December 2017 through May 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in letters submitted via fax on July 29 and July 30, 2018, neither of which requested or provided any documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated August 31, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter submitted via fax on September 5, 2018, Appellant appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing 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 untrue.

### **CONTROLLING LAW**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) 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(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(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

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.”

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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

### **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 on review were based on an analysis of SNAP EBT transaction data during the six month period of December 2017 through May 2018. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein:

- The owner runs the store with diligent attention to SNAP rules and has had no violations in over 12 years. There is only one other store within a four block area that accepts SNAP, but both operate consistent with all applicable laws;
- Regarding the sales ending in .99 cents. The owner’s routine business practice is to round down all sales to the nearest .99 cents. This is a psychological marketing ploy to appease the typical customer who are used to sales being net of sales tax. The owner pays sales tax separately on these net amounts in his year-end filing. Even with these tactics to retain customer loyalty, customers still complain;
- The multiple uses over a short time are because a household of several members will only have one EBT card which they each use separately when shopping at the store. In any given day, a family will have numerous separate charges as each member uses the account. There has been an influx in the community of multiple families residing at one address. Multiple individuals of a family or families will use the SNAP account for

multiple transactions on one business day and therefore are repeated through a calendar week or month. One family may purchase three boxes of cereal at \$10.00, one gallon of milk at \$5.00, one pound of lunch meats at \$6.99, one pound of cheese at \$6.90, and a bag of chips at \$3.00 **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There are other examples when an individual lives in a rooming or coop house. The residents are required to provide every day nutritional items at these residences where there may or may not be access to a kitchen or stove area.

- The owner values his business and his freedom too much to ever do anything that conflicts with the law. There are some individuals that continue to abuse the SNAP program. Some will make purchases on their EBT card for non-SNAP customers and then sell them the groceries at a discounted price, but these transactions occur outside of the firm and out of the owner's control. The owner cannot monitor all transactions to ensure there are no repeat customers and also cannot discriminate against customers. It is not reasonable to expect owners to monitor account usage;
- A business in this area cannot survive without EBT. There also is only one other store within a four block radius accepting EBT. The owner understands the activity pattern may not be typical, but the environment where the store is located is not typical either;
- The owner has done nothing wrong and the firm is the only way he has to support his family. The local residents also depend on the firm for their groceries. He is circulating petitions in the neighborhood in support of his being permitted to keep EBT; and,
- There is a pattern and a concerted effort to close down every business in the area that accepts EBT. This is wrong and a disservice to the community.

Appellant submitted signed pre-printed statements from 34 customers in support of these contentions.

## **ANALYSIS AND FINDINGS**

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. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

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

### **Store Background and FNS Store Visit**

FNS initially authorized the firm on September 27, 2007. The case file shows that the firm received a warning letter from WIC in federal fiscal year 2017. It also shows that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 20, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a very small grocery store with narrow aisles and high shelves offering a limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services. The firm stocked traditional American brands as well as a variety of canned and packaged Hispanic foods. There were no other ethnic or specialty food items.
- The store visit report and photos showed no shopping carts or hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- The checkout area was set into a plastic display wall and was approximately 1.5 feet wide and 1.5 foot deep. There was a large ice cream freezer directly in front of the checkout area that customers must reach over in order to place their purchases onto the checkout counter and would make it problematic to process large orders. The checkout counter had a cash register, no optical scanner, and a POS terminal as confirmed by the store owner.
- The firm had a limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- There was a large refrigerated deli display case and a commercial kitchen with a range of equipment that included a large cooktop grill with exhaust, a double deep fat fryer, a stainless steel prep table, and refrigerated storage. Per the store owner, store staple food stock such as deli meats, deli cheeses, produce, etc. are used in the preparation of the hot/cold, ready-to-eat prepared foods making it difficult to determine if a food item in the deli case is actually for sale or for use in hot/cold food preparation. There was no posted menu listing the available hot/cold foods and their prices or signage with the prices for the deli meats and cheeses sold by the pound.
- The firm had no fresh unprocessed meat or seafood, no frozen unprocessed meat, only a few packages of frozen Pollock and no other frozen unprocessed seafood, a limited quantity and variety of processed meats (canned meat, poultry, fish; several deli meats, hot dogs, jerky, and bacon) no packaged lunch meats, no sausages, no frozen entrees, no frozen dinners, several cartons of eggs, an extremely limited selection of fresh fruit and vegetables (potatoes, onions, tomatoes, three lettuce, limes, and green peppers), no frozen fruits or vegetables, no packaged nuts, a very limited selection of canned soups, a limited quantity and variety of canned and packaged staple food items, a couple of deli cheeses, several packaged cheeses, no yogurt, no sour cream, no butter, several

margarine, several loafs of bread/Italian bread, no rolls, no pitas, several packages of tortillas, no tostadas, corn meal, flour, sugar, rice, dried beans, corn meal, cold cereals, hot cereals, single serving noodle soups, canned pasta, dry pasta, dry noodles, no mac&cheese, baking mixes, cooking oil, cocoa, coffee, tea, and no expensive staple food items other than infant formula.

- Ineligible items included: tobacco, household and paper products, health and beauty items, ATM, hot food, hot drinks, diapers, incense, and clothing while accessory foods included: candy, spices, condiments, cooking oil, sugar, snacks, baked goods, single serving ice cream, baking mixes, coffee, tea, cocoa, and un/carbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were 8 AM-9:30 PM daily as confirmed by the owner who also stated that the firm did take phone orders, did not take online orders, did not deliver groceries, did not round price totals up or down, and did not have an unusual pricing structure with most product prices not ending in .x9 cents.
- Most food items were priced with all visible food prices ending in .x9 cents except for a very few items priced differently such as some single serving drinks priced at \$1.75 and Cheerios cold cereal price at \$6.30. Comments on the FNS store visit report specifically noted that most food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being a 12.4 ounce container of baby formula priced at \$17.99, a 96 ounce bottle of vegetable oil priced at \$9.99, one pound of buffalo chicken priced at \$6.99, and an 18 ounce box of cold cereal priced at \$6.30. This listing of the most expensive items was provided by the owner during the store visit.
- While the firm did stock a minimal selection of baby foods, juices, cereals, and infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers, not SNAP EBT.
- The store visit report noted dust on canned and packaged goods indicative of a slow turnover of stock.

### **Unusual numbers of transactions ending in a same cents value**

This attachment lists 512 transactions ending in the same cents value of .99 cents.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. The FNS store report and photographs revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of same cents high dollar transactions is irregular and suspicious for this type store.

Appellant contends the same cents transactions were due to the owner's routine business practice of rounding down all sales to the nearest .99 cents. This is a psychological marketing ploy to

appease the typical customer who are used to sales being net of sales tax. The owner pays sales tax separately on these net amounts in his year-end filing. Even with these tactics to retain customer loyalty, customers still complain to the owner.

The inventory report and photos from the 2018 FNS store visit show the Appellant firm offered a minimal stock of staple foods that included a limited number of expensive staple food items making it questionable that such a large number of high dollar SNAP transactions could be for legitimate food purchases. The store visit report, completed in conjunction with the store owner, specifically notes that the firm's pricing structure has the majority of food prices ending in .x9 cents and that the firm does not round price totals up or down thereby refuting Appellant's claim of lowering totals to .99 cents. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same cents value of .99 cents as multiples of nine seldom have a value ending in this amount making it statistically impossible that this many store transactions would end in this amount with legitimate food purchases. This is further supported by the number of high dollar value transactions in the third Attachment that do not end in .99 cents.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. When many transactions end in a same cents amount, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in this Attachment have not been adequately documented as legitimate.

### **Multiple transactions in unusually short time frames**

This Attachment documents 37 individual transactions in 16 sets of two or more transactions conducted by 13 different households in a short period of time. One household is responsible for four of the 16 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of four individual transactions and three sets are comprised of three individual transactions while the remaining 12 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions are because a household of several members will only have one EBT card which they each use separately when shopping at the store. In any given day, a family will have numerous separate charges as each member uses the account. There has been an influx in the community of multiple families residing at one address. Multiple individuals of a family or families will use the SNAP account for multiple transactions on one business day and therefore are repeated through a calendar week or month. One family may purchase three boxes of cereal at \$10.00, one gallon of milk at \$5.00, one pound of lunch meats at \$6.99, one pound of cheese at \$6.90, and a bag of chips at \$3.00

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are other examples when an individual lives in a rooming or coop house. The residents are required to provide every day nutritional items at these residences where there may or may not be access to a kitchen or stove area.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment 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 a small grocery store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as all, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 15 of the 16 sets having subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average small grocery store SNAP transaction amount in Philadelphia County during the review period was \$8.77. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review.

The Retailer Operation Division's analysis of shopping patterns for households listed in this Attachment shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a much smaller and minimally stocked grocery store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the review period this household shopped at four super stores and three supermarkets located nearby and up to 5.42 miles away that included 40 transactions at the supermarket located one block away. That this household conducted sizeable transactions at the Appellant firm immediately before and after shopping at much larger stores on the same day is indicative of trafficking.



There is no legitimate reason why this household would spend so much of its SNAP allotment at a minimally stocked small grocery store when it clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

### **High Dollar Value Transactions**

This Attachment lists 244 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$8.77 for this store type in Philadelphia County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. The high dollar value transactions remain questionable when considering the proximity of these other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at small grocery or convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 63 comparably sized or larger SNAP retailers located within a one mile radius of the Appellant firm that includes a super store, four supermarkets, and a medium grocery store. The closest supermarket is located just 105 yards or approximately one block from Appellant's location. All of these larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked small grocery store.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Philadelphia County small grocery stores during the review months and at the Appellant firm is significant. Appellant's SNAP transaction dollar amount is 35.8 percent larger than that of Philadelphia County small grocery stores while its total SNAP transaction count is 34.09 percent larger than the County average and its average

SNAP transaction dollar volume is 82.08 percent larger than the County average. The unusually high number of SNAP transactions is an indication the firm may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm had irregular SNAP transaction data compared to like type stores in Philadelphia County. A comparison of Appellant's redemption data to Philadelphia County small grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume are comparable to the average of like type stores in the lowest range (5 U.S.C. § 552 (b)(6) & (b)(7)(C)), but then significantly exceeds the average in the remaining ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at which point transactions stop. It is worth noting that Philadelphia County stores do not begin averaging less than one transaction in each range 5 U.S.C. § 552 (b)(6) & (b)(7)(C) while the Appellant firm stopped having transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), significantly less than that of comparable stores. While there are normally fewer transactions in these higher dollar ranges, the data shows that most stores of this type do still have a small number of them further supporting that the Appellant firm may be dividing larger trafficking transactions into smaller ones as previously discussed. Dividing large transactions into a series of smaller transactions has long been a technique used by retailers to avoid suspicion when trafficking SNAP benefits. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the very limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting high dollar value transactions, yet are conducting comparable or higher dollar value transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on June 20, 2018, shows that the Appellant firm offers a limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy,

condiments, drinks, and single serving foods as well as many ineligible items. The fact that tobacco, household products, paper products, health and beauty items, ATM, hot food, hot drinks, diapers, incense, and clothing are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant months. The firm has an extremely small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

### **Other Contentions**

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing 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 untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When the store owner signed the certification page of the SNAP retailer authorization application to become a SNAP retailer in 2007 and again when he applied for reauthorization in 2016, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

A review of Appellant's 34 customer statements shows that these are pre-printed form letters with the customer writing their name, address, and EBT number in blanks provided and then signing the bottom of the form. Seventeen statements had no EBT number and two statements had only a single number in the EBT block. A check of the Pennsylvania SNAP database shows that only 11 of the 34 individuals signing the statements had active SNAP cases and only nine of them actually shopped at the Appellant firm during the review period. These facts clearly refute the claims made on the statements that the individual completing the form is a SNAP recipient who frequently shops at the Appellant firm. This casts significant doubt on the legitimacy of all the statements and strongly suggests that more likely than not they were fabricated in an attempt to avoid or mitigate the permanent disqualification. Additionally, database records show that two of the 11 individuals reside 2.0 and 2.7 miles from Appellant's location. Common sense makes it unlikely that these individuals would travel more than four miles round trip to shop at the Appellant firm past dozens of larger and better stocked stores if they were only making purchases of common food items at the firm and more likely that they were exchanging SNAP benefits for cash or other ineligible items.

There is no basis to Appellant's claim that there is a concerted effort by USDA to close every business that accepts EBT. Records show that only seven SNAP retailers located within 0.5 miles of Appellant's location have been permanently disqualified since January 1, 2017. Records also show that during the review period there were 20 SNAP authorized retail stores within the same distance, the vast majority of which were classified as small grocery stores.

The owner and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly state that "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". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions

conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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 charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, 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, ownership'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.

### **CIVIL MONEY PENALTY**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit any evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

### **CONCLUSION**

The Retailer Operations Division presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

## **RIGHTS AND REMEDIES**

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

Under the 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.

ROBERT T. DEEGAN  
Administrative Review Officer

March 7, 2019