

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

**Aykswn Mini Mart Inc,**

**Appellant,**

**v.**

**Case Number: C0213928**

**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 a permanent disqualification of Aykswn Mini Mart Inc. (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Aykswn Mini Mart Inc.

**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.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from March 2018 through August 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- Excessively large purchase transactions were made from recipient accounts.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Aykswn Mini Mart Inc. for SNAP participation as a convenience store on March 27, 2012. In a letter dated November 26, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of March 2018 and August 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated December 6, 2018, the Appellant, through counsel, responded to the charges, vehemently denying that it engaged in any activity not permitted by SNAP regulations and claiming that the firm's owner is a hard-working, honest man who runs the business strictly by the rule of law. The Appellant further contended that the total volume of the transactions is comparatively minimal and is congruent with the conduct of a legitimate grocery store. The Appellant claimed that the firm's owner runs a busy and well-stocked grocery store that is not, like many small markets, a beer and cigarette store. The firm sells no alcohol, and as a matter of principle, does not sell any dual-use products that can be used for the packaging or consumption of illicit drugs.

The Appellant argued that repetitive transactions in Attachment 2 of the charge letter is not borne out by the charges themselves because the shortest interval between transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, while the others are separated **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Appellant contended that these are legitimate purchases by one or more persons of the same household.

As for even-dollar transactions, the Appellant contended that the firm sells Red Bull energy drinks for **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** per case and cold sandwiches for \$3.00, \$5.00, \$8.00, and \$9.00, depending on the size of the sandwich. According to the Appellant, the **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, was a purchase of two cases of Red Bull.

As for large transactions, the Appellant contended that the firm sells a lot of meat in the store, which leads to large individual purchases.

In support of its response, the Appellant submitted a very large number of inventory invoices and receipts from a wide variety of vendors; quarterly tax returns for the first three quarters of 2018; and 42 pages of payroll records for the firm.

After considering the Appellant's response to the charges and further evaluating the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 11, 2019. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division

considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the regulations, but determined that a CMP was not appropriate in this case 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.

In a letter postmarked February 14, 2019, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food 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, [or] 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.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, in part:

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...

## APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The agency's determination letter makes absolutely no mention of the items raised in the Appellant's response to the charge letter. It simply makes a conclusory finding that the violations occurred at the firm.
- In response to the Appellant's telephone inquiry to the Retailer Operations Division, the agency representative kept saying, "You don't advertise." The firm has been in business for nearly a decade in the same location. The products offered for sale are well-known to the firm's customers. The Appellant owner has also never seen an established small store in the area advertise.
- Appellant requests a de novo review of the case, and requests that the administrative review give adequate consideration and weight to the issues raised in response to the charges.
- The Appellant continues to deny that trafficking occurred. FNS has not proven the charges by any reasonable measure or standard of proof; it has merely provided printouts showing certain patterns of sales that it considers nefarious, but has not offered one iota of proof that the firm accepted benefits in exchange for cash.
- FNS has made its conclusion without giving the firm a meaningful opportunity to challenge the allegations or to confront or cross-examine witnesses. The bare opportunity to submit documents to counter FNS's allegations does not rise to the requisite due process necessary to deprive the firm of a valuable right to participate in SNAP. At the very least, FNS should be required to conduct an evidentiary hearing of the charges.
- FNS's decision to disqualify the firm was arbitrary and capricious in its complete failure to address the documents the Appellant submitted in its defense.
- FNS's decision was contrary to the weight of the evidence. While FNS offered only a printout of transactions, the Appellant produced voluminous documentary evidence to support its position that it is an honest merchant that properly handled SNAP transactions.
- Permanent disqualification is disproportionate and excessive. This is especially so since the firm sold only 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP-eligible items in all of 2018. On the other hand, the Appellant's documentation shows that it purchased inventory and supplies far in excess of that amount.

In support of its contentions, the Appellant submitted 25 pages of additional inventory invoices and summaries, 53 color photographs of the firm's inventory, and a handwritten letter from the Appellant owner explaining that the firm did not violate the law.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced in this document.

## ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

### Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained during an October 8, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Aykswn Mini Mart Inc. is a small convenience store, approximately 1,200 square feet in size, operating in the city of Rochester, Monroe County, New York.
- At the time of the contractor's visit, the firm did not have any shopping carts or handheld shopping baskets, which is typical for stores of this size. Customers shopping in such stores generally purchase only as much food as they can carry in their arms.
- The store visit photographs show one cash register for food purchases and one EBT point-of-sale device.
- It appears that the firm does not use optical scanners to process transactions.
- The checkout area consists of a small countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is little space on the counter to place more than a few small items at a time and little room for customers to maneuver with large amounts of groceries.
- Despite a heavy emphasis on snack foods, drinks, and prepared foods, the firm's staple food inventory is sufficient for program eligibility. The overall breadth of staple foods is typical of a convenience store or corner market.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, cleaning supplies, personal care items, and other miscellaneous household merchandise.
- The store has a large kitchen/deli area, where hot and cold made-to-order sandwiches and full hot meals are available for purchase. Cold sandwiches are priced between \$2.99 and \$7.99. An example of a hot meal is a whole pizza, 24 chicken wings, and two 2-liter bottles of soda for \$29.99. Smaller meals, such as a single burger with fries, sells for \$4.50. Although there are no signs to indicate such, it appears that the firm may also sell meat and cheese by the pound.
- There is no indication from the store visit report that the firm has a special pricing structure. Most prices appear end in 9, such as \$0.99, \$2.99, etc.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit Aykswn Mini Mart Inc. to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets, and the availability of larger SNAP-authorized stores nearby, including two supermarkets and a superstore less than three quarters of a mile away. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of nearby, similar-sized competitors.

## SNAP Transaction Analysis

**Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 45 transactions ending in .00, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such transactions are not supported by a specific pricing structure at the store, they are a strong indicator of trafficking in SNAP benefits. The likelihood that so many non-taxed transactions, which would typically consist of random items from the store's shelves, would so frequently and legitimately end in .00 is very low.

In its response to the charge letter, the Appellant argued that the firm sells Red Bull energy drinks for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per case. According to the Appellant, the largest transaction in this attachment – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – was a purchase of two cases of Red Bull. Additionally, the Appellant claims that cold sandwiches sell for \$3.00, \$5.00, \$8.00, and \$9.00, depending on the size of the sandwich.

Unfortunately, the information obtained during the store's inspection does not support the Appellant's claims. Photographs taken by the contractor do not show cases of Red Bull anywhere on the premises, either displayed on the store's shelves or in storage. The only Red Bull found in the store were individual cans in one of the coolers. Of course, the contractor's photographs were a single moment in time and this review cannot definitively state that the store never sold cans of Red Bull by the case. But because the agency's evidence does not match the Appellant's claims, additional evidence is necessary to verify that the transactions in question were legitimate purchases of eligible food. Such evidence might include itemized cash register receipts or other detailed sales documentation which proves that the transactions were lawful.

As for the sandwich prices, the contractor's photographs show a large menu board with prices of \$2.99, \$4.99, \$5.99, and \$7.99. According to the contractor's report, transaction totals at the store are not rounded up or down at checkout. As such, it is unlikely that transactions involving cold sandwiches would so frequently end in .00.

Based on the information from the contractor's report, this review cannot find any reason why even-dollar transactions would occur so frequently at this store. Without compelling evidence to show that the transactions were legitimate, it is reasonable for this review to conclude that the transactions in Attachment 1 were likely the result of trafficking.

**Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP households within a set time period.** This attachment lists 15 sets of transactions (32 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small convenience store like Aykswn Mini Mart Inc. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such patterns and transaction totals at a moderately-stocked convenience store are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation.

The Appellant has not offered any evidence, such as itemized cash register receipts, to prove that the specific transactions in Attachment 2 were legitimate purchases of eligible food. As such, it is the determination of this review that the patterns found in this attachment were likely the result of trafficking.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 114 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with other convenience stores in the state of New York. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in New York was \$8.57. In Monroe County, the average was even lower, at just \$6.28 per transaction, but the average transaction in Attachment 3 is more than eight times larger than the average purchase amount for this store type.

Given that the Appellant firm has a moderate inventory of staple foods and other SNAP-eligible items, such as snacks and drinks, it is possible that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, this review could find no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the constricted checkout area, the absence of shopping carts and baskets, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 3 lists eight transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering the store's characteristics, this review finds it unlikely that all of these transactions are valid SNAP purchases.

Included in Attachment 3 are several unusually repetitive transaction totals. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Of course, with more transactions that occur at a given store, the greater the likelihood that a transaction total will be duplicated. But these stand out as particularly unusual given their frequency and large size. That a number of randomly-selected items would so frequently result in these transaction totals is highly irregular.



As noted earlier, the Appellant has stated that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) transactions are for the sale of a case of Red Bull. The Appellant has also claimed that large transactions are a result of the firm selling a lot of meat. Unfortunately, the Appellant has offered no evidence, such as itemized cash register receipts, to verify what actually occurred during each transaction. The Appellant did provide a large amount of inventory evidence, including invoices showing the purchase of Red Bull and fresh meat. But it offered no evidence that the Red Bull was sold by the case and no evidence that the meat was primarily packaged and sold raw rather than being used in the preparation of hot meals, such as a ribs and rice dinner, or beef or chicken stew.

Without evidence to verify that the transactions in question were legitimate purchases of eligible food, it is reasonable for this review to conclude that the transaction patterns found in Attachment 3 were the result of trafficking.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

### **Appellant's Evidence**

In its response to the charge letter, the Appellant provided a large amount of evidence, including inventory invoices and receipts; tax returns; payroll documentation, and photographs of the firm's inventory.

With regard to the Appellant's inventory evidence, there is little question that the firm had sufficient inventory to cover the SNAP transactions that took place at the store during the review period. However, inventory records alone do not give a complete picture of the activities taking place at a store and they offer virtually no insight into what transpired at the cash register. Sales or accounting records, such as cash register receipts or other documentation identifying individual transactions, may have been useful to show what happened between the firm and its customers. Without such evidence, this review is left to speculate on the firm's activities. Based on the very unusual patterns found in the charge letter attachments and the evidence compiled by the Retailer Operations Division, it is the conclusion of this review that trafficking was likely occurring.

As for the tax returns and payroll documentation, neither offers any insight into what took place during the transactions listed in the charge letter. As such, this review finds such documentation to be of little value.

The undated color photographs are likewise of little evidentiary value. By and large, the Appellant's photographs mirror the photos taken by the contractor during the inspection, except that there is much more meat in the Appellant's photos as well as a photo of a case of Red Bull. It is likely, however, that the Appellant took its photographs after receiving the charge letter. As such, the Appellant's pictures thus do not necessarily represent store conditions as they existed during the review period.

It is the finding of this review that the Appellant's evidence does not sufficiently explain the unusual transaction patterns listed in the charge letter and thus do not provide a valid basis for reversing the disqualification decision or for mitigating the penalty imposed.

It should be noted here that there is no evidence that the Retailer Operations Division failed to consider the entire record in this matter. The agency has produced a large volume of analytical data and narrative related to the transactions listed in the charge letter and the responses and evidence submitted by the Appellant. While the February 11 determination letter may not have been as descriptive and comprehensive as the Appellant wanted, there is no evidence that the Appellant's responses were ignored in any way.

### **Trafficking Case based on EBT Data**

The Appellant contends that FNS has not proven the trafficking charges by any reasonable measure or standard of proof. It contends that FNS has merely provided printouts showing certain patterns of sales that it considers nefarious, but has not offered one iota of proof that the firm accepted benefits in exchange for cash. The Appellant further contends that FNS reached a conclusion of trafficking without giving the firm a meaningful opportunity to challenge the allegations or to confront or cross-examine witnesses. The Appellant contends that at the very least, FNS should be required to conduct an evidentiary hearing of the charges.

With regard to the contention that FNS has not proven that trafficking occurred, this review acknowledges that a conclusion of trafficking cannot be drawn from transaction data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS's Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which states, in part, "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, [or] evidence obtained through a transaction report under an electronic benefit transfer system ....**" [Emphasis added.]

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the charge letter. This review has thoroughly examined the documentation and information provided by the Retailer Operations Division and has found no evidence to suggest that the agency simply manufactured numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found

it to be suspicious in comparison to other area stores of similar size, and then completed a thorough analysis, including an evaluation of the Appellant's responses and documentation, before concluding that trafficking was likely occurring. Accordingly, this review can find no evidence that the Appellant's due process rights were violated in any way.

It is important to restate here that in an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. It is the determination of this review that the Appellant's evidence is not sufficient to prove that the transactions listed in the charge letter were, more likely than not, legitimate purchases of eligible food.

With regard to the Appellant's claim that an evidentiary hearing should be required, it is noted that in September 2003, revisions to parts 278 and 279 of the SNAP regulations eliminated in-person hearings as part of the administrative review process. Administrative reviews that are conducted in accordance with regulation are done in writing. Neither the Food and Nutrition Act of 2008 nor SNAP regulations contemplate formal discovery procedures and an adversary hearing as part of the administrative review process. Thus, there is no provision for confrontation with Department witnesses and cross-examination of any such witnesses during an administrative review. However, due process rights are protected by the provision within the Act which provides for judicial review. Once an administrative review decision has been made, if the Appellant is dissatisfied with the determination, 7 U.S.C. § 2023 provides for the right to a judicial review and a trial de novo.

### **Severity of Administrative Penalty**

The Appellant contends that permanent disqualification in this matter is disproportionate and excessive. It claims that this is especially so since the firm sold only 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP-eligible items in all of 2018 while purchasing inventory and supplies far in excess of that amount.

With regard to this contention, SNAP regulations at 7 CFR § 278.6(e) require that when serious violations, such as trafficking, occur, permanent disqualification is the necessary penalty, even on the first occasion, regardless of the size or amount of the transactions. The regulations do not allow for a lesser penalty for trafficking violations, As long as the administrative action taken by the agency fully conforms to SNAP regulations, this review has no authority to dismiss or reduce a period of disqualification. In this case, the sanction imposed by the Retailer Operations Division is supported by SNAP regulations and is consistent with sanctions imposed upon other retailers that have committed similar violations.

### **Civil Money Penalty**

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking civil money penalty when it replied to the charge letter and it provided no evidence which would indicate that the firm had a compliance policy or training program of any kind. Therefore, in accordance with 7 CFR § 278.6(b) and (i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

### **CONCLUSION**

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Aykswn Mini Mart Inc. from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information and evidence in this case, the decision to impose a permanent disqualification against the Appellant, Aykswn Mini Mart Inc., under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON  
Administrative Review Officer

June 19, 2019