

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

Badme Inc,

Appellant,

v.

Case Number: C0196769

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Badme Inc. by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP when it imposed a Permanent Disqualification against Badme Inc. on February 22, 2017.

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.

CASE CHRONOLOGY

In a letter dated January 20, 2017, the Retailer Operations Division informed the Appellant that his firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a telephone conversation with Retailer Operations Division staff on January 27, 2017 and in written correspondences received by the Retailer Operations Division on January 26, 2017, February 11, 2017, and February 17, 2017, the Appellant, through counsel, denied the trafficking allegations and provided explanations for the questionable SNAP transactions that were outlined in the January 20, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated February 22, 2017, informing the Appellant that Badme Inc. was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked March 6, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated March 9, 2017.

STANDARD OF REVIEW

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

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, *inter alia*:

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

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, *inter alia*:

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

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

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, *inter alia*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, *inter alia*:

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

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from June 2016 through November 2016. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the Appellant's replies to the Charge Letter and in the review request postmarked March 6, 2017 and in a subsequent correspondence postmarked April 4, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Badme Inc.;
- Badme Inc. has been in business for approximately five years and this is the first time that the Appellant has been cited for any SNAP violations;
- The violative SNAP transactions listed in FNS' Charge Letter are not based upon any direct evidence that trafficking took place as they are based solely upon a computerized analysis of the SNAP transactions that occurred during the six month review period;
- FNS made its decision to permanently disqualify Badme Inc. from the SNAP based solely on a computer generated analysis and, therefore, it is not based on any evidence being gathered such as admission, cooperating witnesses, or an on-site investigation of the store;
- The total amount of the transactions listed in Attachment 1 of the Charge Letter **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This amount represents only 8.3% of the total SNAP sales that were transacted at Badme Inc. during the review period;
- The multiple transactions made from individual benefit accounts in unusually short timeframes are explainable by the high volume of customers patronizing the store, the specific products sold at the store, the high volume of sales, and the operation of EBT funding;
- Only one of the transaction sets included in Attachment 1 is for duplicate amounts (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**). It is likely that these duplicate charges are the result of some manner of malfunction with the EBT POS device requiring a second swipe of the customer's EBT card;
- The excessively large purchase transactions are explainable by the

high volume of customers patronizing the store, the specific products sold at the store, the high volume of sales, and the operation of EBT funding;

- As is indicated in *Freedman v. U.S. Dept. of Agriculture*, 926 F.2d 252 (3d. Cir. 1991), the explanations and supporting documentation provided by the Appellant constitute substantial evidence that would meet Badme Inc.'s evidentiary burden (i.e., a preponderance of the evidence) upon review by a Federal District Court in Judicial Review; and
- The Appellant is requesting that FNS reconsider its decision to permanently disqualify Badme Inc. from participation in the SNAP and allow the store to continue to redeem SNAP benefits.

In support of the Appellant's contentions, the following documents were submitted to FNS for consideration:

- Two photos of Badme Inc.;
- 2015 Federal Income Tax Return of Appellant;
- 1099 K—2016 Payment Card & Third Party Network Transactions;
- List of produce for sale at Badme Inc. and pricing of produce; and
- TD Bank Business Account Statement for Badme Inc.; Time Period: January 2016 through December 2016.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Badme Inc. as a fruit/vegetable specialty store on June 15, 2012. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 20, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Badme Inc. is approximately 200 square feet in size and it does not have a storage area outside of the public view;

- Badme Inc. is located in an urban, commercial area of Philadelphia, Pennsylvania;
- As is indicated in the below photo, Badme Inc. is essentially a produce stand that operates out of the back of a couple of shipping containers with a small stand built in the front;
- There were no shopping carts or hand-held baskets available for customer use;
- Badme Inc. does not have a traditional cash register. Cash transactions are performed by the Appellant with change being made out of the Appellant's pants pocket;
- Badme Inc. has one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- Badme Inc. has a food stock that is typical of fruit/vegetable specialty stores as it offers for sale fresh fruits and vegetables only;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Badme Inc. is not a WIC Program vendor and it does not sell any infant foods or infant formula;
- Per the store visit observations, Badme Inc. does not sell any expensive staple food items;
- It does not appear from the store visit observations that Badme Inc. extends credit to customers;
- No signs were posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include deals on fresh produce;
- The checkout counter/area has a limited space as it has miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Badme Inc. does not stock any fresh or frozen meats, poultry, or fish;
- Badme Inc. does not stock any frozen food items;
- Badme Inc. does not have a deli case/section in which deli meats and cheeses are sold by the pound;
- Badme Inc. does not have a kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and offered for sale to customers;
- Badme Inc. stocked a moderate variety and amount of fresh produce items;
- Badme Inc. did not stock any staple food items other than fresh fruits and vegetables;

- Badme Inc. did not stock any accessory foods; and
- Badme Inc. did not stock any ineligible nonfood items.

Photo #1: Badme Inc. is essentially a produce stand that operates out of the back of a couple of shipping containers with a small stand built in the front:



On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking.

Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Allegations

Regarding the Appellant's contention that he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant's firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. 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.

First Time Violator

The Appellant contends that Badme Inc. has been in business for approximately five years and this is the first time that he has been cited for any SNAP violations. However, a record of participation in the 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. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

SNAP Disqualification Based on Circumstantial Evidence

The Appellant contends that the violative SNAP transactions listed in FNS' Charge Letter are not based upon any direct evidence that trafficking took place as they are based solely upon a computerized analysis of the SNAP transactions that occurred during the six month review period. FNS made its decision to permanently disqualify Badme Inc. from the SNAP based solely on a computer generated analysis and, therefore, it is not based on any evidence being gathered such as admission, cooperating witnesses, or an on-site investigation of the store. Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division

does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 262,462 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged. Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail. Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that the charges are speculative and based solely upon a computer generated analysis is not compelling.

Transactions Represent Small Percentage of Total SNAP Sales

The Appellant contends that the total amount of the transactions listed in Attachment 1 of the Charge Letter **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This amount represents only 8.3% of the total SNAP sales that were transacted at Badme Inc. during the review period. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . shall be permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or

possession of EBT cards...”. In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. Additionally, the Act noted herein and the regulations pursuant thereto do not stipulate a minimum dollar amount of SNAP benefits trafficked in order to meet the definition of “trafficking” at 7 CFR § 271.2.

Multiple Transactions Made from Individual Benefit Accounts in Unusually Short Timeframes (Charge Letter Attachment 1):

This Attachment documents 55 sets of transactions (110 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Violating stores often conduct multiple transactions from the same household account as a method to avoid detection of single high dollar transactions that cannot be supported by the retailer’s food inventory and infrastructure.

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are explainable by the high volume of customers patronizing the store, the specific products sold at the store, the high volume of sales, and the operation of EBT funding. Only one of the transaction sets included in Attachment 1 are for duplicate amounts **(5 U.S.C. § 552 (b)(6) & (b)(7)(C))**. It is likely that these duplicate charges were the result of some manner of malfunction with the EBT POS device requiring a second swipe of the customer’s EBT card. However, the Appellant’s unsubstantiated statements are not supported by available evidence. With regard to the Appellant’s claim that only one of the transaction sets included in Attachment 1 is for duplicate amounts **(5 U.S.C. § 552 (b)(6) & (b)(7)(C))** and that it is likely that these duplicate charges were the result of some manner of malfunction with the EBT POS device requiring a second swipe of the customer’s EBT card, a review of FNS’ records with regard to these two duplicative transactions indicates that one SNAP household conducted two SNAP transactions at Badme Inc. during a single visit **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There was no refund provided to this SNAP household pertaining to these transactions. As such, it is highly unlikely that a SNAP household would allow **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to go “unclaimed” if they had experienced a malfunction with Badme Inc.’s EBT POS device during the transactions.

As such, the Appellant’s contention is unsubstantiated. It is also important to note that this same SNAP household conducted five SNAP transactions at Badme Inc. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is highly unlikely that this SNAP household spent a good portion of their SNAP benefits at Badme Inc. to purchase fresh

produce only, especially since this household made much smaller purchases at a super store and other authorized SNAP stores during that same time period.

The Appellant claims that these questionable SNAP transactions are explainable by the operation of EBT funding. In other words, many SNAP households spend the majority of their SNAP benefits at Badme Inc. at the beginning of the month—soon after they receive their monthly SNAP benefit allotment. This claim is supported by an FNS study which states that SNAP households typically spend 60 percent of their benefits within one week of receiving them and have only a small percentage left by week three. The Appellant is correct in that a government report on SNAP household patterns indicates that after the first day of benefit issuance, on average 80 percent of a household's allotment remains unspent. After seven days, 40 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a moderately stocked fruit/vegetable specialty store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

The Appellant also contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are explainable by the high volume of produce sales. Since Badme Inc. is not a very large store, the Appellant has to restock the store with produce throughout the day because of the high volume of customers patronizing the store. However, the Appellant's unsubstantiated statement is not supported by available evidence. For example, the Appellant did not provide FNS with any vendor invoices for the fresh produce that was purchased for Badme Inc. during the review period. The submission of vendor invoices for the review period may have substantiated that the Appellant purchased enough staple foods to substantiate that the SNAP transactions listed in the Charge Letter Attachments were legitimate SNAP purchases made by SNAP recipients and that he had purchased enough foods during the review period to cover the SNAP transactions that occurred during the six month review period.

The Appellant provided FNS with a copy of his 2015 Federal Income Tax Return and the 1099 K—2016 Payment Card & Third Party Network Transactions for

Badme Inc. to help substantiate that Badme Inc. conducted large numbers of SNAP transactions during the review period. However, the Appellant's 2015 Federal Income Tax Return is not germane to this case as the questionable SNAP transactions listed in the Charge Letter occurred between June **2016** and November **2016**. As such, the Tax Return has no bearing on this case as it covers 2015. While the 2016 Payment Card & Third Party Network Transactions for Badme Inc. shows the amount of SNAP transactions that occurred during the review period, the document does not substantiate that the transactions were legitimate SNAP purchases made by SNAP recipients. FNS does not dispute that the transactions listed in the Charge Letter Attachments occurred at Badme Inc. during the review period—the Agency questions whether the transactions were legitimate SNAP transactions made by SNAP customers.

The Appellant also provided FNS with a copy of Badme Inc.'s TD Bank Business Account Statement for the period January 2016 through December 2016. According to the Appellant, the business bank statements support that Badme Inc. was conducting large numbers of legitimate SNAP transactions each month. It is important to note that FNS reviewed the information included in the bank account statements for the review period months only (i.e., June 2016 through November 2016) as they are the only months covered in this administrative review. FNS' review indicated that many of the purchases made with Badme Inc.'s business bank account did not include the Appellant purchasing fresh produce to restock Badme Inc. It appears that the Appellant utilized Badme Inc.'s business account for his personal use as well. For example, there were numerous purchases made with Badme Inc.'s business account at the following companies: Lowe's, Ruby Tuesday 2892 (a restaurant), Shell Oil, Capital Insurance Company, Verizon (payment of account), 99 Cent and Dollar Store, Sunoco, Slices and More, Cricket Wireless, Burlington Stores, Tommy Hilfiger 040 (a clothing store), DN Supply Co. (a plumbing company), Azir LLC, Beyond Trading, Inc. (appears to be furniture sales), MPB Wireless Services, Sesame Place Gift Card, Ramada Philadelphia and Residence Inn (both appear to be hotel stays), Impound Lot 2, Pizza Honda of Philadelphia, PA, The Home Depot 4166, and Signature Perfume.

It is also important to note that the business bank account statements indicate that numerous **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** higher cash withdrawals were conducted by the Appellant. These cash withdrawals could have also been used by the Appellant for his personal use and not for restocking fresh produce at Badme Inc. Therefore, based on the business account statements provided to FNS, the Appellant failed to fully support that he was legitimately restocking Badme Inc. with a high amount of produce as reported to support monthly SNAP transactions.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that maybe purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Badme Inc. is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or fish, no frozen fruits or vegetables, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for fruit/vegetable specialty stores to have purchases such as those cited, especially when Badme Inc. does not stock any high priced food items so the majority of food items stocked at the store are low priced items.

The Appellant contends that a large majority of SNAP customers who patronize Badme Inc. walk to the store as they live in close proximity to it. However, a review of client shopping data for the review period shows that clients shopping at Badme Inc. are also shopping at other area grocery stores, as well as a full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Badme Inc., where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking. It is also important to note that if SNAP customers are purchasing large amounts of fresh produce on a daily basis at Badme Inc., it is more likely that these customers would patronize the subject store more frequently and purchase much smaller amounts of produce to ensure it did not spoil. In addition, it would also be difficult for SNAP customers to physically walk and carry 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in produce which would be heavy and cumbersome.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are a total of 92 SNAP authorized retailers located within a 2.0 mile radius of Badme Inc. that can meet the nutritional needs of SNAP customers. It is also important to note that there are three additional SNAP authorized fruit/vegetable specialty stores located within a 0.75 mile radius of Badme Inc. As such, SNAP customers have other alternatives to shopping at Badme Inc. for their fresh produce needs. As mentioned above, SNAP customers that shopped at Badme Inc. during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack

of access to other authorized stores does not appear to be an explanation for Badme Inc.'s abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

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

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This Attachment lists 574 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that Badme Inc. would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are explainable by the high volume of customers patronizing the store, the specific products sold at the store, the high volume of sales, and the operation of EBT funding. However, as noted previously, the information/documentation provided by the Appellant is not sufficient to support that these transactions are the result of the Appellant's claims.

The record shows that there are 92 SNAP authorized retailers located within a 2.0 mile radius of Badme Inc. Several of these SNAP authorized stores are larger than the subject store and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that all of the households shopping at Badme Inc. have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located nearby and at several miles distance from the Appellant's location. While Badme Inc. does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh and frozen meats/seafood and fresh produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other area SNAP authorized stores.

While the Appellant is correct in his contention that fresh produce is a healthy food option for SNAP customers, this fact has no bearing on whether trafficking occurred or did not occur at Badme Inc. during the six month review period. The dollar amount trends that occurred at this firm appear to be too suspicious to be actual legitimate food purchases made by SNAP customers. For example, below are some transaction amount patterns listed in Attachment 2 that are suspicious and appear to be more likely than not contrived amounts for the purpose of trafficking SNAP benefits.

5 U.S.C. § 552 (b)(7)(E)

FNS reviewed and compared the SNAP transactions that occurred at Badme Inc. during the review period to the SNAP transactions that occurred at other SNAP authorized fruit/vegetable specialty stores in Philadelphia County, Pennsylvania during the same timeframe. Specifically, FNS compared transaction trends in various dollar ranges for both Badme Inc. and other fruit/vegetable specialty stores in Philadelphia County. FNS' analysis indicates that Badme Inc. has much higher than average transaction trends in various dollar ranges compared to the fruit/vegetable store type average in Philadelphia County.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This much higher than average transaction trend is a strong indicator that trafficking was most likely occurring at the subject firm during the review period.

The Appellant did not submit any vendor invoices to FNS for foods purchased for Badme Inc. during the six month review period in order to help substantiate that the Appellant had purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. Therefore, FNS could not conduct a vendor invoice analysis. However, it is important to note that even if the Appellant had provided FNS with all of the store's vendor invoices that were dated during the review period and the invoices showed that the Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as consecutive transactions by individuals during the same store visit or in a single day. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being no fresh or frozen meats, poultry, or fish items, no frozen fruits or vegetables, only a moderate amount and variety of fresh produce items, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Badme Inc. to mathematically support high dollar transactions, there does not

appear to be anything that would reasonably attract SNAP households to shop there, a fruit/vegetable specialty store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of five SNAP households identified in the Charge Letter to analyze their shopping patterns at Badme Inc. compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Badme Inc. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a fruit/vegetable specialty store that stocks only fresh fruits and vegetables would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Case Law Citation

The Appellant contends that as is indicated in *Freedman v. U.S. Dept. of Agriculture*, 926 F.2d 252 (3d. Cir. 1991), the explanations and supporting documentation provided by the Appellant constitute substantial evidence that would meet Badme Inc.'s evidentiary burden (i.e., a preponderance of the evidence) upon review by a Federal District Court in Judicial Review. Regarding the case law citation provided by the Appellant, this administrative review decision is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008 and the regulations and agency policy promulgated under the Act. The Administrative Review Officer is not

responsible for determining whether any cases cited by the retailer apply to the retailer's situation. If the case is appealed to the Federal district court, the judge is responsible for determining whether case law cited by the retailer are on point and applicable to the retailer's case. Therefore, any application of a supposed judicial precedent would be best addressed in a judicial review.

Reconsideration of Imposed Permanent Disqualification Requested

The Appellant is requesting that FNS reconsider its decision to permanently disqualify Badme Inc. from participation in the SNAP and allow the store to continue to redeem SNAP benefits. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . shall be permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

As previously indicated, the February 22, 2017 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated January 20, 2017 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

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

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

LORIE L. CONNEEN
Administrative Review Officer

December 12, 2017