

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

**Bless 7 to 10 Market,**

**Appellant,**

**v.**

**Case Number: C0196957**

**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 the Bless 7 to 10 Market (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 October 23, 2017.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its 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**

In a letter dated August 18, 2017, 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 during the months of July 2016 through December 2016. 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, through counsel, responded to the charges in a letter dated August 28, 2017, that admitted to the business offering credit accounts and requested a CMP in lieu of disqualification, but provided no evidence in support of the CMP. The Retailer Operations Division, by letter dated August 30, 2017, requested evidence of the existence of credit accounts at the business. Appellant, through counsel, responded to their request in a letter dated September 11, 2017, submitting documentation of credit accounts. The Retailer Operations Division notified Appellant in a letter dated October 23, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated “. . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program.”

By letter dated October 30, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence dated November 27, 2017, was received from Appellant.

### **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 of SNAP benefits.

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern 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.”

In addition, 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, evidence obtained through a transaction report under an **electronic benefit transfer system** . . . .” (Emphasis added.)

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2. ” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . . .” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

7 CFR §278.6(i) states, inter alia: “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, inter alia: “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 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 Part 278.6(b)(1), 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 July 2016 through December 2016. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

## **APPELLANT'S CONTENTIONS**

In the response to the letter of charges, in the response regarding documentation of credit accounts, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The owners are now aware that the multiple transactions cited in the August 18, 2017, letter were the result of customers allowing multiple individuals the use of their authorization card and password. The counter clerk is unable to challenge the use of the card;
- The owners admit to granting credit, but were not afforded ample time in which to prepare a detailed response to the initial letter. The business maintained a system of ledger sheets which were redeemed by the customers when the accounts were settled. The owners were unaware of the prohibition regarding credit transactions and the practice was discontinued immediately. Sample copies of the ledger sheets are enclosed; no additional sheets are available since they were redeemed by the customers;
- Suspension of SNAP will create a significant hardship to the surrounding low income community where many residents are dependent on SNAP benefits and a CMP in lieu of permanent disqualification is requested. There is no alternative shopping close by and many residents rely on the store since it is within walking distance;
- The store now has strict compliance policies in force and all employees have been trained regarding SNAP transaction eligibility requirements;
- There is no evidence that unqualified items were sold or that cash was exchanged; and,
- The sole violation was the granting of credit. That being the case, the appropriate penalty is disqualification for one year and not permanent disqualification.

Appellant submitted seven pages of credit log sheets in support of these contentions.

The preceding 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.

## **ANALYSIS AND FINDINGS**

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 the Appellant business 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**

The FNS initially authorized the Appellant business on November 28, 2012, and the business is classified as a small grocery store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 7, 2017, 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 EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a small store offering a moderate quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The business stocked typical mainstream American brand products and no ethnic or unique foods.
- Exterior signage advertised: wine, beer, phone cards, DC Lottery, coffee, ice cream, snacks, soda, ice, ATM, and Heineken.
- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- There are two checkout areas set into a plastic security wall with a narrow counter approximately one foot deep in front of them. The counter has many food displays as well as the PIN pad thereby limiting the amount of counter space available to place purchases upon. The checkout area on the left has a small pass through opening at the bottom while the other area has a small revolving window. The small size of both checkout areas would make it problematic to process large orders.
- The checkout counter had two cash registers, one POS terminal, and no optical scanner as evidenced by the SV report and photographs.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale with the exception of bottled water.
- The store visit report specifically notes that the business is not a specialty store and that there are no meat bundles or fruit and vegetable boxes.
- The store had a moderate stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, single serving soups, and ineligible items.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, bacon, hot dogs, packaged lunch meat, and sausages), no deli meats, no frozen entrees, no frozen dinners, very limited fresh fruit and vegetables (six bananas, six potatoes, and onions), no frozen fruits or vegetables, no nuts, no 100 percent vegetable juices, a moderate quantity and variety of canned and packaged staple food items, no baking mixes, no rolls, no tostadas, only one sour cream, no yogurt, no deli cheeses, no baby foods or infant formula, and no expensive eligible food items.
- Ineligible items included: tobacco, alcohol, lottery, household products, paper products, pet products, automotive products, health and beauty items, ATM, phone accessories, incense, and diapers while accessory foods included: candy, spices, condiments, coffee, tea, and carbonated/ uncarbonated drinks.

- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Many food items were priced with all visible staple food prices ending in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The store was not a WIC vendor and did not stock any baby foods or infant formula.
- The business's hours of operation were 7:00 AM-9:00 PM daily as confirmed by a store owner during the store visit.
- The quantity and variety of the store's staple food inventory was comparable to that seen during the previous FNS store visit on November 23, 2012.

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

This Attachment documents 128 individual transactions in 52 sets of two or more transactions conducted by 27 different households in a short period of time.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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 account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions are the result of customers allowing multiple individuals the use of their authorization card and password. The counter clerk is unable to challenge the use of the card.

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. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transaction sets also do not contain the characteristics associated with a household making a payment toward their credit account followed or preceded by a purchase. It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These multiple transactions indicate that the amounts were contrived by store employees trying 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 was not evident at other nearby like type small grocery stores further supporting that trafficking was occurring at the Appellant business during the period under review.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the business has no shopping carts or hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling

individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the “SNAP transaction key” on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The extremely limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant’s stock could be processed in the times listed in this Attachment given that the Appellant business has very limited checkout counter space, no carts or baskets, and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

An analysis of the shopping patterns for the 27 households listed in this Attachment shows that all but one of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant’s location with almost all of the 27 households shopping at a large number of super stores and supermarkets. This analysis further shows that 18 households conducted 16 or fewer transactions at the Appellant business during the six month period under review with 15 of these households conducting eight or fewer transactions indicating that 67 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to conduct multiple transactions totaling to large dollar amounts in short periods of time. This analysis also identified 15 households where the vast majority of their SNAP transactions were conducted at other stores located more than one mile away with most stores located more than 1.5 miles away as well as one household that only shopped at other stores located more than 1.7 miles from Appellant’s location. This is an indication that these 16 households likely reside at a distance from the Appellant business and brings-up the question of why would these households elect to travel a sizeable distance, often several miles round trip from their regular shopping areas, past numerous larger and better stocked stores to conduct multiple purchases at a moderately stocked small grocery store that carries no unique foods or offers any special

services. Appellant's contentions fail to offer any explanation or rationale for these unusual and suspicious shopping patterns. Common sense dictates that it is improbable that households with limited cash resources would choose to travel these distances 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 business and the multiple transactions were attempts by store employees to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported.

FNS records show there are two super stores and two supermarkets located within one mile of Appellant's location that offer greater quantities and varieties of staple food items at lower prices than would be found at a moderately stocked small grocery store that offers no fresh or frozen unprocessed meats and has an extremely limited stock of fresh fruits and vegetables. There is a supermarket approximately four blocks away that specializes in fresh meats and seafood, has a wide selection of fresh produce, offers American and ethnic foods, offers bulk products, is a WIC vendor, is open 24/7, and has a full selection of other grocery items and frozen foods; the Appellant business is not a WIC vendor. There is also a second supermarket also approximately four blocks away that specializes in organic foods. There is fixed route bus service on New Hampshire NW, Quincy Street NW, and Upshur Street all within approximately three blocks of Appellant's location at the corner of Shepherd Street NW and 5<sup>th</sup> Street NW that would facilitate shopping at other stores.

Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any plausible explanations for the irregular shopping patterns exhibited by the households in this Attachment. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at much larger stores offering a greater quantity and variety of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a small grocery store that offers a moderate selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business.

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 270 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a small grocery store of this size offering a moderate stock of staple foods and calls into question the legitimacy of these transactions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual and indicative of trafficking.

Contrary to Appellant's contention that there is no alternative shopping nearby, the record shows that within a 1.0 mile radius of Appellant's store there are 41 SNAP authorized retailers including: two super stores, two supermarkets, one large grocery store, one medium grocery store, two small grocery stores, one farmers markets, one direct marketing farmer, one buying cooperative, five combination grocery stores, and 25 convenience stores. As previously stated, the two supermarkets are approximately four blocks away from Appellant's location. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as 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 business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these 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 business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

Evidence shows that the difference in the average SNAP transaction dollar amount and the total SNAP transaction dollar volume for the District of Columbia small grocery stores during the review months and at the Appellant business is significant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A comparison of Appellant's SNAP redemptions to that of nearby small grocery stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business 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 a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

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 the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make 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 business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on January 7, 2017, shows that the Appellant business offers a moderate 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 and beverages. Additionally, the store visit report specifically notes that the business is not a specialty store and that there are no meat bundles or fruit and vegetable boxes while the store visit inventory form specifically notes that no infant formula or baby foods were in stock on the day of the visit. Since the Appellant business offers no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, jerky, bacon, hot dogs, packaged lunch meat, and sausages), no deli meats, no frozen entrees, no frozen dinners, very limited fresh fruit or vegetables (six bananas, six potatoes, and onions), no frozen fruits or vegetables, no nuts, no 100 percent vegetable juices, a moderate quantity and variety of canned and packaged staple food items, no baking mixes, no rolls, no tostadas, only one sour cream, no yogurt, no deli cheeses, no baby foods or infant formula, and no expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, alcohol, lottery, household products, paper products, pet products, automotive products, health and beauty items, ATM, phone accessories, incense, and diapers are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a small grocery store that does not address all of their food shopping 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 would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has a very small checkout area and no shopping carts or baskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. 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 review months. Accordingly, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of many carts and thus more likely the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant business fluctuated significantly following the FNS store visit on January 7, 2017, and again following the receipt of the charge letter on August 21, 2017. T5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced decrease in SNAP transactions immediately following the store visit and receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal

fluctuations in redemption amounts.

If credit truly is the explanation there should be no sudden drop in SNAP redemptions the first month after the charge letter as the retailer would still be collecting on credit extended from previous months. This would be followed by a slow decline in redemptions as the rest of the credit accounts are collected. Had the store truly been extending large amounts of credit as claimed, it is unlikely the high dollar transactions would suddenly end as the owners would still need to collect the credit previously extended.

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

### **Credit and Other Contentions**

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f), because the owners were not aware of this prohibition when the transactions took place. Appellant further maintains that the transactions were legitimate SNAP purchases, that there is no evidence that unqualified items were sold or that cash was exchanged, and that the business now has strict compliance practices in force and all employees have been trained regarding SNAP transactions eligibility requirements.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the business now has strict compliance practices in force and all employees have been trained are positive steps, they do not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When the store owners signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They 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. This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans. 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. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP

regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations making it difficult to believe that store ownership was not aware that offering credit violated SNAP regulations.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the letter of charges. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In support of Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted documentation consisting of seven handwritten pages purporting to be from a ledger of credit accounts. Appellant further stated that no additional pages are available since they were redeemed by the customers. The credit account pages were the same ones previously submitted by Appellant on September 11, 2017.

The credit documents submitted by Appellant do not provide a detailed or itemized breakdown of what food items were purchased and were in large part illegible. No specific details such as the customer's full name, address, SNAP account number, SNAP EBT card serial number, or dates and dollar amounts of credit purchases or payments were included with this evidence, therefore the credit ledger entries could not be connected to any of the suspicious SNAP transactions in these Attachments and the transactions were evaluated for evidence of trafficking. Even if a business were to offer credit accounts, it seems unlikely that it would allow customers to accrue credit without having any means of contacting these individuals or verifying that they, in fact, were SNAP recipients. Accordingly, it appears that the documents submitted as evidence of payments made using SNAP benefits on credit accounts were fabricated in an attempt to obtain the lesser charge. The documents offered by Appellant do not provide evidence that the store permitted credit accounts during the review period. Since Appellant was unable to account for any of the transactions outlined in the letter of charges, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

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 . . . [d]isqualify 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, either directly, indirectly, in complicity or collusion with others, or acting alone . . .” SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, 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 . . .**” (Emphasis added). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. 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 period under review. 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 photographs from the FNS store visit on January 7, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. 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 in the charge letter Attachments. 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 evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto 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.

### **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, although Appellant requested a CMP, it failed to submit sufficient 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.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. Therefore, 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 has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's 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 that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two 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 by the Retailer Operations Division. 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 is not eligible for a trafficking CMP according to the terms of 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

February 7, 2018