

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

Campbellton Food Mart,

Appellant,

v.

Case Number: C0203785

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 Campbellton Food Mart (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 February 6, 2018.

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

By letter dated December 7, 2017, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in April 2017 through September 2017. 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 December 21, 2017, that included a request for and documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated February 6, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated February 18, 2018, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. Subsequent correspondence dated March 21, 2018, and March 29, 2018, was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

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

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(e)(1)(i) states: “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined in part as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. Trafficking includes “Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food”.

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

7 CFR §278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of April 2017 through September 2017. 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

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

- The store owner disputes the trafficking violations, but does acknowledge that violations conducted by a former employee occurred during this period. A lesser penalty is requested commiserate with the violations and in consideration of the mitigating facts and circumstances. If trafficking is found, consideration for a CMP per Section 278.6(i) is requested;
- In February 2017, an individual was hired as the night manager. Discrepancies were noted in EBT transactions during a review in June 2017. Following further investigation, the employee was terminated effective July 14, 2017, as evidenced by the attached letter. The transactions listed as numbers 3-7, 8, 15-19, 31-35, 38, 85, and 80-84 all occurred during his shifts. The owner took corrective measures by providing additional training to employees. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, sales are now checked at the end of each shift on a daily basis and the business is also in the process of updating its cash register system to have the ability to journal all sales; and,
- The store owner has participated in SNAP for multiple years with no prior violations and submitted an affidavit stating that every employee is trained at the time of employment on SNAP policy and procedures to ensure compliance with SNAP regulations. Training is ongoing and is updated upon changes in SNAP. It is also the firm's policy to terminate any employee violating state or federal law that includes SNAP regulations and management regularly reviews records to attempt to ensure compliance by employees. There was an effective compliance policy in effect prior to the cited violations and the business had instituted an effective training program. The owner was not aware of, did not approve, did not benefit from, and was not in any way involved in the conduct or approval of the alleged trafficking violations.

Appellant submitted two pages of training logs, a copy of the termination letter, and signed and dated affidavit by the store owner in support of these contentions.

ANALYSIS AND FINDINGS

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

FNS authorized the business as a convenience store on October 16, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an August 30, 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 business's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The business was a moderate sized store offering a very limited quantity and variety of staple foods and carrying no unique items, ethnic foods, or offering any distinctive services.
- It is noted that the business was deficient in the dairy category of required staple foods stocking only three units of fresh milk, milk drinks, and single serving ice cream.
- 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 area.
- The checkout area consisted of two night windows set into a plastic security wall each approximately 2.0 feet wide with displays on both sides thereby limiting the counter space available to place items being purchased upon. The very small size of the checkout area would make it problematic to process large orders.
- Each checkout counter had a cash register, POS terminal, and optical scanner as confirmed by a store employee.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for bottled water.
- The business had a very limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, single serving soups, and many ineligible items.
- The business had no fresh unprocessed meats/seafood, no frozen unprocessed meats/seafood, an extremely limited quantity and variety of processed meats/seafood (canned meat/poultry/fish, hot dogs, and jerky), no deli meats, no sausages, no bacon, no packaged lunch meats, no frozen entrees, no frozen dinners, only one carton of eggs, no fresh/frozen fruits or vegetables except for a small number of bananas at the checkout, no vegetable juices, a limited selection of single serving nuts, a limited stock of canned soups, a very limited quantity and variety of canned and packaged staple food items, no canned fruits, no baking mixes, no pancake mixes, no mac&cheese, no bread or rolls, no tortillas, no flour, no rice, no corn meal, no hot cereals, only three containers of fresh milk, no deli cheeses, no packaged cheeses, no butter, no margarine, no yogurt, no sour cream, no coffee, no tea, no cocoa, no spices, no baby foods or infant formula, and almost no expensive eligible food items.
- Ineligible items included: tobacco, tobacco accessories, gasoline, alcohol, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, clothing, hot drinks, charcoal, lighter

fluid, party goods, and incense while accessory foods included: candy, condiments, cooking oil, sugar, and drinks.

- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The business's hours of operation were open 24/7 as confirmed by a store employee.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items priced differently such as snacks at \$1.00, \$2.00 two for \$1.00; some fruit juices at two for \$3.00; and some drinks at two for \$5.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive items costing more than \$5.00 for sale in the store as being a four pack of Red Bull priced at \$7.99, a case of Nestle bottled water priced at \$6.99, one gallon of fresh milk priced at \$5.49, and a 50 unit box of Lay's snacks priced at \$19.99. Note - the Lay's snacks were out of stock on the day of the store visit. This listing of the most expensive items was provided by a store employee during the store visit.
- The store was a not a WIC vendor.
- The store visit report and photographs showed that several shelves, coolers, and display racks were marginally stocked. The quantity and variety of the store's staple food inventory was noticeably less than that seen during the previous FNS store visit on September 21, 2015.

Multiple transactions in unusually short time frames

This Attachment documents 37 individual transactions in 13 sets of two or more transactions conducted by nine different households in a short period of time. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Three sets are comprised of five individual transactions, two sets are comprised of three individual transactions, and the remaining eight sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Appellant admits that SNAP violations occurred when a new employee was hired as the night manager in February 2017. Discrepancies were noted in EBT transactions during a review in June 2017. Following further investigation, the employee was terminated effective July 14, 2017, as evidenced by the attached letter. The transactions listed as numbers 3-7, 8, 15-19, 31-35, 38, 85, and 80-84 all occurred during his shifts.

While Appellant admits to certain transactions being violative, there are others in this Attachment displaying the characteristics associated with trafficking, such as

other whole dollar transactions, which are not explained.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Lastly, no contentions were provided for the transaction set occurring after the night manager's termination.

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. 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.

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 convenience store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as nine of the 13 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as 11 of the 13 sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in nine of the 13 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant business during the period under review.

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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

High Dollar Value Transactions

This Attachment lists 79 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a convenience store offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$6.24 for this store type in Fulton County. The 79 excessively large SNAP EBT transactions at Appellant's business for the review months represents more than 18.4 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at many full-line supermarkets and super stores, located nearby as well as at a significant 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. Specifically, 74 percent (42) of the 57 households listed in the charge letter shopped at a super store, supermarket, or large grocery store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of conducting suspicious transactions at the Appellant business.

The difference in the average SNAP transaction count and the total SNAP transaction dollar volume for Fulton County convenience stores during the review months and at the Appellant business is significant. **5 U.S.C. § 552 (b)(7)(E)**. The unusually high number of SNAP transactions is an indication that the business may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison by the Retailer Operations Division of Appellant's SNAP redemptions to that of nearby convenience 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.

No evidence or rationales to support the legitimacy of these transactions were offered.

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 August 30, 2017, shows that the Appellant business offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, beverages, and single serving foods as well as many ineligible items. Since the Appellant business offers no fresh unprocessed meats/seafood, no frozen unprocessed meats/seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/poultry/fish, hot dogs, and jerky), no deli meats, no sausages, no bacon, no packaged lunch meats, no frozen entrees, no frozen dinners, only one carton of eggs, no fresh/frozen fruits or vegetables except for a small number of bananas at the checkout, no vegetable juices, a limited selection of single serving nuts, a limited stock of canned soups, a very limited quantity and variety of canned and packaged staple food items, no canned fruits, no baking mixes, no pancake mixes, no mac&cheese, no bread or rolls, no tortillas, no flour, no rice, no corn meal, no hot cereals, only three containers of fresh milk, no deli cheeses, no packaged cheeses, no butter, no margarine, no yogurt, no sour cream, no coffee, no tea, no cocoa, no spices, no baby foods or infant formula, and has no expensive staple food items, these patterns are deemed to be suspicious. The fact that tobacco, tobacco accessories, gasoline, alcohol, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, clothing, hot drinks, charcoal, lighter fluid, party goods, and incense are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Increasing food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a convenience 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 built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store

stock via receipts of products taken into inventory for the relevant review months. The Appellant business has a small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant business decreased following receipt of the charge letter on December 11, 2017.

5 U.S.C. § 552 (b)(7)(E). A pronounced decrease in SNAP transactions following 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.

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

Other Contentions

The store owner disputes the trafficking violations, but does acknowledge that violations conducted by a former employee occurred during this period. The business has also participated in SNAP for multiple years with no prior violations. The owner took corrective measures by providing additional training to employees. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Additionally, sales are now checked at the end of each shift on a daily basis and the business is also in the process of updating its cash register system to have the ability to journal all sales. A lesser penalty is requested commiserate with the violations and in consideration of the mitigating facts and circumstances.

It is important to state that this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, if Appellant demonstrates by a preponderance of evidence that it did not engage in trafficking SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If 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 or for mitigating their impact. Regardless of whom the ownership of a store may utilize to handle store business or their involvement in store operations, ownership is accountable for the proper training of staff and the monitoring and handling of SNAP transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. It is not within the authority of this review to consider what subsequent remedial actions may have been taken 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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The owner and the business were charged with trafficking based on a computer analysis of the store's transactions for the months of April 2017 through September 2017. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly state that "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under **an electronic benefit transfer system**" (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, 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. This analysis also included a review of the business to ensure its store classification was correct and the data comparisons with

like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed 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 and second chances are not an authorized option under existing regulations.

CIVIL MONEY PENALTY

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

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit 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.

SNAP regulations are explicit in what constitutes substantial evidence. Specifically, 7 CFR § 278.6(i)(2) states in relevant part, “As specified in Criterion 3 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with part 278 of current FNS regulations and current FSP policy on the proper acceptance and handling of food coupons.” This section goes on to state, “As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation.” This section further states, “A firm which seeks a civil money penalty in lieu of permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted”.

Appellant requests consideration for a CMP per Section 278.6(i) if trafficking is found. Store ownership also submitted an affidavit stating that every employee is trained at the time of employment on SNAP policy and procedures to ensure compliance with SNAP regulations. Training is ongoing and is updated upon changes in SNAP. It is also the firm’s policy to terminate any employee violating state or federal law that includes SNAP regulations and management regularly reviews records to attempt to ensure compliance by employees. There was an effective compliance policy in effect prior to the cited violations and the business had instituted an effective training program. The owner was not aware of, did not approve, did not benefit from, and was not in any way involved in the conduct or approval of the alleged trafficking violations.

No written and dated copy of the firm’s compliance policy was provided nor was any document advanced listing the firm’s employees and their dates of employment. The training logs show entries for EBT, EBT/lotto, gas/EBT, but no documentation as to the content of the training was provided so none of the log entries can be specifically identified as training on SNAP rules and regulations. 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 presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant.

This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in 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. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

ROBERT T. DEEGAN
Administrative Review Officer

May 16, 2018