

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

Charles Village Dollar Plus, LLC,

Appellant,

v.

Case Number: C0210713

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 Charles Village Dollar Plus, LLC (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 29, 2018.

AUTHORITY

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

CASE CHRONOLOGY

By letter dated August 7, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in January through June 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a

trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in a letter postmarked August 16, 2018, which did not request or provide any documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated October 29, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated November 5, 2018, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

STANDARD OF REVIEW

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

CONTROLLING LAW

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

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

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

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

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

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of January through June 2018. This involved three patterns of EBT transaction characteristics indicative of trafficking:

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

APPELLANT’S CONTENTIONS

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

- The owners have had the store since 2017 and it became SNAP licensed the same year. The firm is fully stocked and has a high sales volume and cost of goods for both EBT and non-EBT sales. There are no other employees besides the owners and the firm has had no previous SNAP violations or been under investigation;
- Because the firm is a dollar store, nearly all the items end in .00 cents and range from \$1.00 to \$20.00. The firm’s SNAP customers usually come-up with even dollar sales as shown by the attached cash register receipts;
- The firm is flanked by low income Section 8 housing where most use EBT and the average family consists of 6-12 children and a single parent. The EBT card is used multiple times because there are numerous family members with a significant number being unemployed. The card holders shop with their children who normally buy more

- items such as candy or chips that are located next to the checkout after the initial transaction. Because of the large number of children in households, they do much of the family's shopping and will routinely return to the firm to purchase more items. Excessively large purchases are common due to the family size. The owners comply with the USDA SNAP manual by never questioning the size or frequency of purchases. The multiple transactions are also done based on the customer's request to ring items separately;
- The firm sells a high volume of bundled transactions that account for the excessively large transactions. A bundled transaction is a combination of frozen foods and SNAP eligible drinks. Customers also buy items in bulk;
 - The firm is very strict regarding EBT rules and regulations. The owners' compliance policy states:
 - No exchange of cash for EBT;
 - Customers cannot share EBT cards;
 - Any EBT card questions must be addressed to the owner;
 - Any person engaging in EBT misuse will be terminated;
 - The firm can only sell qualified EBT items; and,
 - The owners state they have no other employees and that no violations have ever taken place and there has been no benefit by any misuse of EBT. The owners and the firm meet the requirements for a trafficking CMP. Criterion 1 is met by having implemented an effective compliance policy. A photocopied booklet made in-house is reviewed when questions arise. Criterion 2 is met as the compliance policy and program were in effect prior to the violations. Since receipt of the charge letter, the owners have stopped customers from purchasing large amounts of bundled items. Criterion 3 is met as the owners completed a training program that is a combination of practical training and a review of the USDA SNAP manual. Criterion 4 is met as the owners were not aware of, did not approve, did not benefit from, and were not in any way involved in the conduct or approval of violations, or it is only the first occasion in which a member of firm management was aware of, approved, benefitted from, or was involved in trafficking violations.

Appellant submitted handwritten undated statements by the owners attesting to their completion of SNAP training, handwritten customer statements, a listing of markups and prices for store stock, invoices for inventory purchases, photos of store stock, and cash register receipts in support of these contentions.

ANALYSIS AND FINDINGS

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

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

Store Background and FNS Store Visit

FNS initially authorized the firm on July 12, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 25, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a typically sized convenience store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The store stocked traditional American brands.
- The store visit report and photos showed no shopping carts and only six small hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase.
- The store visit report specifically notes that the firm was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- There was a single checkout area with two night windows set into a plastic security wall. The night window openings were about one foot wide and there was a shelf in front of the windows that was approximately six inches deep leaving a very limited area for customers to place their purchases. The very small checkout area would make it problematic to process large orders. The checkout area had one cash register, one specialty cash register for lottery sales, a POS terminal, and no optical scanner as confirmed by the store owner.
- The store 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 soda, candy, snacks, and other drinks as well as many ineligible items, particularly clothing and household items. The contract store visit reviewer estimated that clothing accounted for approximately one-third of the available floor space.
- The firm had no fresh unprocessed meat or seafood, no frozen unprocessed meat or seafood, a very limited quantity and variety of processed meats (canned fish, single serving beef and turkey jerky, six packages of hot dogs, and packaged lunch meats), no deli meats, no sausages, no bacon, no frozen entrees, no frozen dinners, five cartons of eggs, no fresh fruit or vegetables except for 11 bananas, no frozen fruits or vegetables, no dried fruit or vegetables, a minimal selection of packaged single serving nuts, an extremely limited selection of canned soups, a very limited quantity and variety of

canned and packaged staple food items, no deli cheese, nine packages of cheese, no yogurt, two packages of butter, seven packages of margarine, no canned milk, single serving bottles of fresh milk, four loaves of bread, no rolls, no pitas, no tortillas, no tostadas, corn meal, flour, sugar, rice, no hot cereal, 11 boxes of cold cereal, four packages of single serving cold cereal, many single serving Ramen noodle soups, canned pasta, no dry pasta, no dry noodles, no pancake mixes, no baking mixes, no mac&cheese, no frozen sandwiches, cooking oil, no coffee, no tea, cocoa, no baby foods, no infant formula, and very few expensive staple food items.

- Ineligible items included: tobacco, tobacco accessories, lottery, hot coffee, household and paper products, pet products, auto products, health and beauty items, ATM, shoes, clothing, hats, phone accessories, toys, candles, money orders, tools, and books of stamps while accessory foods included: candy, spices, condiments, snacks, baked goods, cooking oil, sugar, single serving ice cream, cocoa, and un/carbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were 7 AM-10 PM Monday-Saturday and closed on Sundays as confirmed by the owner. The owner also stated that the firm did not take phone or online grocery orders; did not deliver groceries; and did not round transaction totals up/down.
- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the store owner, specifically stated that most food prices end in .x9 cents. A review of store visit photos confirmed the pricing structure of .x9 cents for almost all food items except for a very few items priced differently such as one brand of snack pies priced at \$1.00, some jerky priced at two for \$1.00, some candy priced at 25 cents, and some single serving drinks priced at \$1.50 and two for \$2.00. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the most expensive food items costing more than \$5.00 for sale in the store as being a 24 ounce jar of Prego tomato sauce priced at \$5.99, a six ounce package of Old Bay seasoning priced at \$5.99, and a 16 ounce package of Blue Bonnet margarine priced at \$5.49. There were only three items priced at \$5.00 or more. This listing of the most expensive items was provided by the owner during the store visit.
- The firm was a not a WIC vendor.
- The store visit report and photos showed empty or marginally stocked shelves/coolers/display racks indicating a slow turnover of stock. The quantity and variety of the store's staple food inventory was less than that seen during the previous FNS store visit on June 27, 2017.

Unusual numbers of transactions ending in a same cents value

This attachment lists 247 transactions ending in the same cents value of .00 cents.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. The FNS store report and photos revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents

values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of same cents high dollar transactions is irregular and suspicious for this type store.

Appellant contends that because the firm is a dollar store, nearly all the items end in .00 cents and item prices range from \$1.00 to \$20.00. The firm's SNAP customers usually come-up with even dollar sales. Appellant submitted a price list and cash register receipts.

The inventory report and numerous photos from the 2018 FNS store visit show the firm had a very limited stock of staple foods that included few expensive staple food items on the day of the visit making it questionable that such a large number of high dollar SNAP transactions could be for legitimate food purchases. The visit report, completed in conjunction with the store owner, specifically notes that the firm's pricing structure has the majority of food prices ending in .x9 cents and that the firm does not round transaction totals up or down. The firm's pricing structure is further supported by store visit photos showing almost all foods with prices ending in .x9 cents. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same cents value of .00 cents as multiples of nine seldom have a value ending in these amounts making it statistically impossible that this many store transactions would end in these amounts with legitimate food purchases. Appellant's claim that individual food item prices range from \$1.00 to \$20.00 is not supported by the store visit report that contains a section listing the four most expensive items priced at \$5.00 or more. The store owner could only provide three items with prices exceeding \$5.00 and none of them exceeded \$5.99 thereby disproving the claim that the firm sold expensive items costing up to \$20.00. That Appellant's price list contains items such as shrimp, chicken, and turkey breast priced from \$10.00-\$20.00 is disproven by the store visit inventory report, the store visit photos, and the store owner's own statement regarding the firm's most expensive items. These significant contradictions point toward an attempt to misrepresent store inventory and pricing in an effort to circumvent the permanent disqualification. This is further supported by the invoices provided by Appellant. A review of the invoices shows four invoices for chicken wings and shrimp and one for turkey breasts. The invoices are of the type you buy in an office supply store with blanks and sequential numbering. The five invoices do not contain the firm name, address, or any other information regarding the identity of the firm selling the meat. Four receipts were undated and one had a date that was illegible. The serial numbers of the invoices are 053003, 053005, 053007, 053008, and 053011. That these numbers are this close together and the lack of any identifying information for the firm or legible dates combined with the store visit report and photos make it doubtful that these invoices are legitimate.

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

Multiple transactions in unusually short time frames

This Attachment documents 111 individual transactions in 36 sets of two or more transactions conducted by 29 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 34 of the 36 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of eight individual transactions, one set of six, two sets of five, five sets of four, and 13 sets of three while the remaining 14 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the firm is flanked by low income housing where most use EBT and the average family consists of 6-12 children and a single parent. The EBT card is used multiple times because there are numerous family members with a significant number being unemployed. The card holders shop with their children who normally buy more items such as candy or chips that are located next to the checkout after the initial transaction. Because of the large number of children in households, they do much of the family's shopping and will routinely return to the firm to purchase more items. Excessively large purchases are common due to the family size. The multiple transactions are also done based on the customer's request to ring items separately. The owners comply with the USDA SNAP manual by never questioning the size or frequency of purchases.

Appellant's claim that the average household in this area consists of 6-12 children with a single parent is not supported by the evidence. The U.S. Census Bureau shows the average family size in Baltimore City county during 2012-2017 was 2.46 individuals. The Bureau's 2017 American Community Survey shows household size in Appellant's zip code as being 42.4 percent with one person, 29.2 percent with two, 13.8 percent with three, and 14.7 percent with four or more. Accordingly, Appellant's claim is dismissed as having no evidentiary value.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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 22 of the 36 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 33 of the 36 sets having subsequent transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two. Appellant's contentions also provide no explanation as to why households would conduct up to eight sizeable transactions at the Appellant firm within a short period of time.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average convenience store SNAP transaction amount in Baltimore City County during the review period was \$7.34. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review. Additionally, the fact that 91 of the 111 individual transactions end in .00 cents supports trafficking as previously discussed since the Appellant firm's pricing structure and inventory do not support the large dollar transactions ending in .00 cents that are found in this Attachment.

Based on the very limited number of expensive items for sale at the Appellant firm costing more than \$5.00, it is likely that a transaction in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would consist of more than 10 items. 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 firm 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 involves 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 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 the longer the time period between transactions. The extremely limited counter space as well as manually key-entering lengthy EBT card numbers adds additional time to transactions.

The Appellant firm processed transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner, a large checkout area, shopping carts, or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. 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 the facilities at the firm. 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.

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

5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the review period, this household regularly shopped at three super stores, six supermarkets, two medium grocery stores, and at specialty meat and seafood stores. There is no legitimate reason why this household would spend so much of its SNAP allotment at a very minimally stocked convenience store when it clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

One of the transaction sets in this Attachment also contained an individual transaction that occurred **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The firm's reported business hours have the firm closing at either 9:00 PM or at 10:00 PM. Records show that the previous SNAP transaction occurred at 6:16 PM so the firm was not busy making this a very unusual and suspicious transaction. Large dollar transactions occurring well outside of store business hours are indicative of trafficking.

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

High Dollar Value Transactions

This Attachment lists 151 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$7.34 for this store type in Baltimore City County. This is unusual and indicative of trafficking.

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

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 46 comparably sized or larger SNAP retailers located within a one mile radius of the Appellant firm that includes five supermarkets, two medium grocery stores, and a meat specialty store. Two of the closest supermarkets are just two blocks north and four blocks south of Appellant's location. These stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a very minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood and virtually no fresh or frozen produce.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Baltimore City County convenience stores during the review months and at the Appellant firm is significant. Appellant's SNAP transaction dollar amount is 30.38 percent smaller than that of Baltimore City County convenience stores while its total SNAP transaction count is 77.45 percent larger than the County average and its average SNAP transaction dollar volume is 23.45 percent larger. The unusually high number of SNAP transactions combined with the low average SNAP transaction dollar amount is an indication the firm may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

Appellant contends the high dollar transactions are because the firm sells a high volume of bundled transactions that account for the excessively large transactions. A bundled transaction is a combination of frozen foods and SNAP eligible drinks. Customers also buy items in bulk. Appellant submitted customer statements, a listing of markups and prices for store stock, invoices for inventory purchases, cash register receipts, and store stock photos in support of these contentions.

Regarding Appellant's contentions, it is readily apparent from the FNS store visit report and photos that the claim of the Appellant firm selling a high volume of bundled transactions that include frozen foods is not accurate. The store visit report, completed in collaboration with the store owner, shows no bulk items, no fresh or frozen unprocessed meat/seafood, no fresh or frozen fruit/vegetables besides several bananas, and no items costing more than \$5.99 being offered for sale. Outside of a small ice cream chest freezer containing single serving ice cream, the firm has no other freezers and no other frozen foods. Additionally, as previously discussed, there are two better stocked supermarkets located just minutes away.

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

Information obtained during the FNS store visit on June 25, 2018, shows that the Appellant firm 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, candy, condiments, drinks, and single serving foods as well as many ineligible items. The fact that tobacco, tobacco accessories, lottery, hot coffee, household and paper products, pet products, auto products, health and beauty items, ATM, shoes, clothing, hats, phone accessories, toys, candles, money orders, tools, and books of stamps are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

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

A detailed analysis of invoices submitted for inventory purchases was conducted by the Retailer Operations Division and the dollar amount of eligible food purchases compared to the firm's SNAP redemptions for the review period. All invoices were included in the analysis in order to give the benefit of the doubt to the retailers even though several were dated after the review period and several others were undated and/or contained no identifying information for the firm selling the foods. Both a 40 and a 50 percent markup was used and show that the SNAP eligible food inventory would account 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in potential sales, depending on the percentage used, with neither being sufficient to account for the SNAP redemptions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period. Accordingly, the invoices were insufficient to account for the volume of SNAP redemptions and indicate that the transactions were not for legitimate food purchases.

Many of Appellant's undated photos are similar to those taken during the FNS store visit and confirm the firm offers a very limited stock of staple foods that includes many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items. Some of the photos do show greater quantities of stock than in the FNS photos and some additional food items that were not evident in the FNS photos as well as pricing signs that were not present in the FNS photos. The store visit report and photos show none of these items and the store owner confirmed there were no items costing more than \$5.00 available for purchase at the time of the store visit. The price list submitted by Appellant also contains several items priced at more than \$5.00 that were not mentioned by the store owner as being available for purchase and were not seen in the FNS photos. These facts support that Appellant's photos were staged and the price list fabricated in an effort to avoid the permanent disqualification and therefore they are of no evidentiary value.

Out of the 109 cash register receipts received, one was a duplicate, three could not be read, and three were not found in the charge letter. The remaining 102 receipts account for less than 22 percent of the 473 charge letter transactions. Additionally, the receipts were not itemized and therefore give no indication as to what items were actually purchased. Therefore the receipts provide no basis to show that all charge letter transactions were legitimate and that the disqualification decision should be reversed.

Four of the 11 addresses listed in the customer statements were for an outpatient health center located one block away from the Appellant firm and two other addresses listed were 4.2 and 6.4 miles away from Appellant's location raising questions as to where the first four lived and why the second two travelled such a distance to shop at the Appellant firm. Almost all of the statements mention shopping at the Appellant firm because it is convenient and only one statement claims the Appellant firm is their primary grocery, this being the recipient living 6.4 miles away. None of the statements mention large dollar multiple transactions in a short period of time or conducting excessively large dollar transactions. The 11 customer statements were analyzed and exact matches found for six SNAP recipients. All six matched recipients also shopped at super stores and/or supermarkets during the review period. Two recipients had transactions at the Appellant firm in June 2018 only and their transactions did not exceed 5 U.S.C. § 552 (b)(6) & (b)(7)(C) while another household's transactions did not exceed 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Two other recipients had transactions listed in the second

charge letter Attachment and the last recipient had one transaction listed in the third Attachment. These statements provide no evidence to support Appellant's contentions or to explain the irregular SNAP transaction patterns.

It is further noted that SNAP redemptions at the firm fluctuated unusually following receipt of the charge letter on August 8, 2018. The average SNAP transaction dollar amount decreased 36.49 percent from July 2018 to August 2018 while the volume of SNAP redemptions decreased 30.48 percent during the same period. A pronounced fluctuation in SNAP redemptions 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

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. When the store owners signed the certification page of the SNAP retailer authorization application to become a SNAP retailer in 2017, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

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

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food”. SNAP regulations at 7 CFR § 278.6(a) clearly state that “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

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

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm

permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option under existing regulations.

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 submitted undated statements by the two owners well after the specified deadline saying that they had completed the firm’s training program. Appellant did not submit a copy of the firm’s SNAP compliance policy and program or any dated training curricula and records of training sessions.

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

CONCLUSION

The Retailer Operations Division presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant’s EBT transaction record was the primary basis for its

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

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

RIGHTS AND REMEDIES

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

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

ROBERT T. DEEGAN
Administrative Review Officer

May 8, 2019