

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

Christina Grocery,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0208467

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Christina Grocery (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

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

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from October 2017 through March 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Christina Grocery for SNAP participation as a convenience store on November 21, 2013. In a letter dated June 11, 2018, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of October 2017 and March 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated June 22, 2018, the Appellant, through counsel, responded to the charge letter, claiming it was wholly unaware of any SNAP violations perpetrated by the firm's owner or any of his employees. In addition to this response, the Appellant requested a civil money penalty in lieu of permanent disqualification. The Appellant provided an explanation of its training practices as well as a copy of the *SNAP Training Guide for Retailers* in Spanish.

On the same day that it submitted its initial response to the charge letter, the Appellant, through counsel, submitted a request for case file information in a request made through the Freedom of Information Act (FOIA). This request was filed directly with the FNS FOIA office. Upon learning of the Appellant's FOIA request, the Retailer Operations Division discontinued further action on the case until a response to the FOIA request was completed.

On July 18, 2018, the agency sent Appellant's counsel its response to the FOIA request. The response included 142 pages of responsive documents. By all indications, the Appellant did not submit an appeal to the FOIA response, so on October 24, 2018, the Retailer Operations Division resumed activity on the case.

On November 5, 2018, the Appellant, through counsel, submitted a three-page response to the charge letter along with 69 color photographs of the store and its inventory; a one-page summary report from USDA outlining the cost of food at home; and approximately 200 inventory invoices and receipts, of which roughly 150 were from the six-month review period mentioned earlier.

In its November 5 letter, the Appellant outlined specific arguments against the trafficking allegations. Regarding multiple transactions from the same household in a short time period, the Appellant argued that the store is located in a neighborhood composed of multigenerational families living at the same address. All individuals within such households have different shopping patterns, including parents and grandparents. As such, it is easy, according to the Appellant, for an EBT card to be used multiple times within a short time period. The Appellant further argued that some households may allow a third party to use their EBT card in exchange for cash or something else of value; or, family members and friends may shop together with the same EBT card without the knowledge of the firm. SNAP customers may also make food purchases and then turn around and sell the items for cash on the street. Because the firm is not required to obtain a cardholder's identification, it has no mechanism in place to monitor the activity of EBT cards, and such a requirement does not exist under USDA regulations.

Regarding excessively large transactions, the Appellant argued that transactions between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are not unusual because the store is more than just a corner store. The Appellant contended that Christina Grocery is a small supermarket and deli that carries a variety of ethnic foods and that some of its customers do all of their grocery shopping there. According to the Appellant, Christina Grocery is the only small grocer in the middle of an otherwise residential section of town. The Appellant further argued that one of its nearest competitors – a store two blocks away – recently closed, which may account for the higher sales numbers at the Appellant firm. The Appellant acknowledged that there are large grocery stores a short car ride away, but for those in the area who rely on public transportation, Christina Grocery is more convenient when transportation is not available.

Finally, the Appellant argued that some customers purchase food items by the case, which would surely put a transaction into the “excessively large” classification. The Appellant also contended that food costs in the greater Hartford region have never been so high – 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant argued that to classify a purchase of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) as “excessively large” when that amount is the cost of a week’s worth of food seems patently unfair.

After considering the Appellant’s response to the charges and further evaluating the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 28, 2019. This letter, which was delivered to Appellant’s counsel on March 15, 2019, informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant’s eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the regulations, but determined that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked March 21, 2019, the Appellant, through counsel, appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted. It is noted that in a package postmarked May 3, 2019, the Appellant submitted a brief letter and a CD containing more than 300 pages of supplementary documentation.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

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

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

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

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

7 CFR § 278.6(c) states, in part:

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

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

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

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

APPELLANT'S CONTENTIONS

In its request for administrative review, the Appellant, through counsel, did not provide any additional contentions beyond what had already been expressed in its letters to the Retailer Operations Division. However, the Appellant submitted a CD containing approximately 300 additional pages of inventory records. A few of the inventory invoices had no dates listed, but the vast majority of invoices were dated after the six-month review period noted earlier. Only one invoice – from Hartford Distributors, Inc. – was clearly within the review period, but this invoice was for the purchase of beer, which is not eligible for purchase with SNAP benefits. The

Appellant also submitted a petition signed by 316 apparent SNAP customers. The petition stated that the store is located “within 4 blocks of my neighborhood,” and it would be a hardship to the community if the store was not able to accept purchases through the EBT system.

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

ANALYSIS AND FINDINGS

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

Contractor Store Visit

The case file indicates that in reaching a conclusion of trafficking, the Retailer Operations Division considered not only the Appellant firm’s EBT transactions, but also information obtained during an April 14, 2018, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Christina Grocery is a convenience store, approximately 2,000 square feet in size, operating in the city of Hartford, Hartford County, Connecticut.
- At the time of the contractor’s visit, the firm did not have any shopping carts or shopping baskets for customer use, which is typical for stores of this size. Customers shopping in such stores generally purchase only as much food as they can carry in their arms. There was one shopping cart in the store, but it did not appear to be for customer use, but rather used by the firm for stocking purposes.
- The store visit photographs show one cash register for food purchases and agency records reflect the use of one EBT point-of-sale device.
- The checkout area consists of a very small, cluttered countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- The firm’s staple food inventory is sufficient for program eligibility. The overall breadth of staple foods is typical of a convenience store or corner market.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including alcoholic beverages, tobacco products, cleaning supplies, personal care items, and other miscellaneous household merchandise.

- The store also has a small kitchen area, where deli items, such as freshly-made sandwiches, are prepared.
- At the time of the contractor’s visit, the firm was an authorized retail store in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). This is reflected in the food items available for purchase with WIC benefits, including fresh produce, canned tuna, fruit juice, bread, milk, breakfast cereal, legumes, and infant foods such as infant formula and jars of baby food. It should be noted that the vast majority of SNAP households that contain infants and children under the age of five are also eligible for WIC participation. Therefore, it is uncommon for such households to purchase items from the WIC food package with their SNAP benefits; rather, they use WIC vouchers to make such purchases.
- There is no indication from the store visit report that the firm has a special pricing structure. Most prices end in 9, such as \$0.99, \$1.59, \$2.99, etc.
- According to the contractor’s report, the most expensive SNAP-eligible food items included a 27.2-ounce container of infant formula for \$32.00; a 20-pound bag of rice for \$12.99; a one-gallon container of cooking oil for \$12.99; and an 18-ounce box of cereal for \$5.99. There is no indication from the report that the store sells large or expensive items, such as meat bundles, cases of food or beverage, or other bulk items.

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

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 18 sets of transactions (43 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a convenience store like Christina Grocery. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). All of this at a store with no shopping carts or shopping baskets to help carry large amounts of food.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such patterns and transaction totals at a convenience store are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation.

The Appellant has argued that the store is located in a neighborhood composed of multi-generational families living at the same address and that the individuals within the households have different shopping patterns. As such, it is easy for an EBT card to be used multiple times

within a short time period. The Appellant further argued that some households may allow a third party to use their EBT card or that family members and friends may shop together with the same EBT card without the knowledge of the firm. The Appellant contends that because the firm is not required to obtain a cardholder's identification, there is no mechanism in place to monitor the activity of EBT cards, and contends that such a requirement does not exist under USDA regulations.

With regard to these contentions, it is acknowledged that except for requiring benefits to be spent on eligible food, regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how large a transaction may be or how many times a household may use its EBT card at a particular location. As such, there is no requirement or expectation that a firm keep track of the frequency of an EBT card's usage at its store. However, the transactions in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and inconsistent with normal shopping behavior by SNAP households. It should be noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores of similar size. This review does not contend that frequent or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

Unfortunately, the Appellant's arguments are entirely anecdotal and are submitted without any kind of supporting documentation to show that the specific transactions in question were legitimate purchases of eligible food. Such evidence might have included itemized cash register receipts or other accounting records to show exactly what transpired at the cash register.

Because the Appellant's explanations offer little insight into the specific transactions in question, and because the transactions themselves are highly unusual, it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 2: Excessively large purchase transactions were made from recipient accounts. This attachment lists 230 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with other convenience stores in the state of Connecticut. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Connecticut was \$8.60. In Hartford County, the average was a bit higher, at \$9.17 per transaction, but the average transaction in Attachment 2 is almost six times larger than the average purchase amount for this store type.

Given that the Appellant firm has a moderate inventory of staple foods and other SNAP-eligible items, such as snacks and drinks, it is possible that there would be an occasional purchase where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 2. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially

considering the constricted checkout area, the absence of shopping carts and baskets, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 2 lists three transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many low-priced food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering the store's characteristics, this review finds it unlikely that every transaction in Attachment 2 was a legitimate purchase of eligible food.

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a SNAP household went to a nearby superstore and supermarket and spent roughly 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The following day, this same household went to Christina Grocery and spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C). All told, between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Christina Grocery – a small corner store with no shopping carts, no shopping baskets, and with no discernible price advantages or special offers. It is difficult for this review to comprehend what was available at Christina Grocery that would not have been available at a supermarket or superstore only a short time earlier. It is further difficult to picture a household purchasing and storing more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of groceries 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such transactions are well outside of normal shopping behavior of SNAP households and warrant further explanation and evidence to verify that the transactions were valid.

The Appellant has contended that the transactions in Attachment 2 are not unusual because the store is more than just a corner store. The Appellant contends that Christina Grocery is a small supermarket and deli which carries a variety of ethnic foods. It also argues that some of its customers do all of their grocery shopping there. The Appellant acknowledged that there are large grocery stores a short distance away, but claims that Christina Grocery is more convenient when transportation is not available. The Appellant further argues that some customers purchase food items by the case and contends that food costs in Hartford have never been so high.

Unfortunately, none of the Appellant's anecdotal claims is supported by compelling evidence, such as cash register receipts, to prove that the transactions in question were legitimate. Additionally, according to agency records, there are more than 30 SNAP-authorized retail stores, including 14 other convenience stores, located within a one-mile radius of Christina Grocery. It stands to reason that the conditions affecting Christina Grocery – multigenerational families, transportation issues, high food costs, etc. – would impact comparable stores in a similar manner, resulting in similar transaction patterns. But that is simply not the case. The agency's evidence shows that the Appellant firm's SNAP redemption patterns differ significantly from those of nearby, similar-sized competitors.

Without compelling evidence to address the specific transactions in question, it is reasonable for this review to conclude that the transactions in Attachment 2 were likely the result of trafficking.

It is the finding of this review that the attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially

different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case of trafficking is convincing.

In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant's contentions do not sufficiently address the specific transactions in question. Therefore, it is the conclusion of this review that the transactions in the charge letter were, more likely than not, the result of trafficking violations.

Appellant's Evidence

As noted earlier, the Appellant has provided a large amount of evidence, particularly inventory invoices and receipts and photographs. In all, the Appellant submitted more than 500 pages of documentation. Over 200 pages were given to the Retailer Operations Division, and more than 300 pages were submitted as part of the Appellant's request for administrative review.

With regard to the Appellant's inventory evidence, most of the invoices submitted were outside the six month review period of October 2017 through March 2018, and thus cannot be considered. Of the 292 pages of inventory records given to the administrative review officer, just one was dated within the review period, and it did not contain any SNAP-eligible food items. Additionally, approximately 60 receipts given to the Retailer Operations Division were either undated or were outside of the review period. As such, they are of little evidentiary value.

As to the remaining estimated 150 pages of inventory receipts from the review period, the record shows that the Retailer Operations Division completed a full analysis of this data. The Retailer Operations Division found that when considering the eligible food items from the receipts as well as an estimated retail markup of 40 percent, and considering the firm's WIC redemptions during the same period, the firm had more in SNAP redemptions than its available inventory. It is possible, of course, that the firm did not provide all of its invoices and receipts from the time period, but the data suggests that the firm did not carry enough inventory to account for all of its SNAP transactions, which in turn suggests that the store was conducting transactions for things other than eligible food, such as cash or non-food items.

Because inventory records alone do not give a complete picture of the activities taking place at a store, other evidence, such as itemized cash register receipts or accounting data identifying individual transactions, is useful to show what happened between the firm and its customers at the point of sale. Without such evidence, this review is left to speculate on the firm's activities. In this case, the evidence points to trafficking as a likely reason for the unusual transaction patterns.

As for the color photographs, these are likewise of little evidentiary value. By and large, the Appellant's photographs mirror the photos taken by the contractor during the inspection, except that the store is more amply stocked in the Appellant's photos. It is likely, however, that the Appellant took its photographs after receiving the charge letter. As such, the Appellant's pictures do not necessarily represent store conditions as they existed during the review period.

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

Hardship to SNAP Households

Although not explicitly stated by the Appellant, the firm has offered evidence to suggest that SNAP households in the area will experience hardship if the firm's permanent disqualification is upheld. This evidence is in the form of a petition signed by 316 supposed SNAP customers. The petition states that Christina Grocery is "the only store within 4 blocks of my neighborhood," and claims that the whole community will experience great inconvenience and hardship if the store is not able to accept SNAP benefits.

With regard to this contention, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP based on hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

Civil Money Penalty

In its original response to the charge letter, the Appellant, through counsel, requested a civil money penalty in lieu of permanent disqualification for trafficking based on the regulation found in 7 CFR § 278.6(i). This regulation states that a firm may be eligible for a CMP if it demonstrates that it had established and implemented an effective compliance policy and program to prevent program violations. In an effort to demonstrate that it meets the criteria for this alternative penalty, the Appellant submitted a written explanation which detailed the firm's training activities to ensure compliance with SNAP regulations. The Appellant also provided a copy of the *SNAP Training Guide for Retailers* in Spanish and explained that all employees are given a copy of the training guide when they are hired and are required to view a SNAP training video on the USDA public website. The Appellant explained that after an initial rigorous training program and after monthly refresher trainings and tests, the clerks are subject to a zero-tolerance policy with regard to exchanging SNAP benefits for cash. The Appellant stated that its training program has been in operation since the store first received its SNAP permit.

It is noted that the Appellant's request for a CMP as well its submission of documentation in support of its request was made within appropriate timeframes in accordance with 7 CFR § 278.6(b)(2).

The primary issue regarding the imposition of a CMP in lieu of permanent disqualification for trafficking is whether or not the Appellant meets each of the four established eligibility criteria for this alternative penalty. These criteria must be met in order for a firm to demonstrate that it

had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with 7 CFR § 278.6(i), fulfillment of the four criteria must be established by “substantial evidence.” Standards of evidence in this regard are found in 7 CFR § 278.6(i)(1) and (2). Unfortunately, the Appellant has offered almost no evidence to support its claim that the firm had an effective compliance policy and program. Such evidence must include documentation of training activities, including dated training curricula and records showing the dates that training sessions were conducted. In order to meet the CMP criteria, a firm must also provide a record of dates of employment of firm personnel, and documentation that violating employee(s) participated in initial and follow-up trainings held prior to the current violations. No such information was provided. The firm also offered no evidence of specific firm policy related to the proper acceptance and handling of SNAP benefits. There is no evidence that such a written policy exists or was in operation prior to the suspected trafficking violations. The submission of the *SNAP Training Guide*, while informative, is publicly available online for all retailers and offers little insight into Christina Grocery’s specific store policies.

As noted above, fulfillment of each of the four criteria in 7 CFR § 278.6(i) must be established by “substantial evidence.” In this case, the Appellant submitted little more than an anecdotal explanation. Because the firm has failed to offer specific evidence of a compliance policy or training program, this review agrees with the Retailer Operations Division that the Appellant is not eligible for a CMP lieu of permanent disqualification.

CONCLUSION

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

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

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

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

JON YORGASON
Administrative Review Officer

July 10, 2019