

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch  
Alexandria, VA 22302**

Community Mini Market,	)	
	)	
Appellant,	)	
	)	
v.	)	Case Number: C0191565
	)	
Retailer Operations Division,	)	
	)	
Respondent.	)	
_____	)	

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence that a permanent disqualification of Community Mini Market 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 took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Community Mini Market.

**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 December 2015 through June 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value
- There were multiple purchase transactions made too rapidly to be credible
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes
- Excessively large purchase transactions were made from recipient accounts.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Community Mini Market for SNAP participation as a small grocery store on July 2, 2013. In a letter dated July 21, 2016, 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 December 2015 and June 2016. 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).

The Appellant did not reply to the charge letter.

After further consideration of the evidence in the case, the Retailer Operations Division determined that trafficking had occurred as charged and issued a determination letter dated August 11, 2016. This determination letter 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 SNAP regulations, but 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 August 22, 2016, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It is noted that in support of its administrative review request, the Appellant submitted additional information in a letter postmarked September 8, 2016. This additional information will be described later in this document.

## STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, 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, *inter alia*:

*... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of*

*coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...*

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

*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(a) states, *inter alia*:

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

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, *inter alia*:

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

7 CFR § 271.2 states, *inter alia*:

*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, *inter alia*:

*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(b)(2)(ii) states, *inter alia*:

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

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, *inter alia*:

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

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The accusations against the store are false.

- The July 21, 2016 charge letter was delivered to a neighbor, who did not give it to the Appellant until August 18, 2016. This is why the Appellant did not reply to the charges. It did not know the charge letter existed.
- The store always follows all old, and any new procedures made by USDA.
- The store does not have any control over how much or what amount or how many times a day the customers want to spend its SNAP benefits. Appellant had no idea that there was a limit on how many times or what amount a customer can purchase with their EBT card. If this is one of the rules or regulations, the Appellant would like to know, as neither the firm nor the customers were aware of such rules.
- The store has daily sales, such as 2-for-1, or 5-for-10. In such instances, the transactions will have zero cents.
- Sometimes the firm will waive the cents if they are regular customers.
- The store has never had any issues with anyone with regard to laws and regulations. The Appellant is on point with the rules and does not break any regulations or statute, whether state or SNAP.
- The Appellant has never had anything like this happen before. The privilege of being SNAP-authorized is something that the Appellant does not want taken away. The customers need this benefit in the store.

In a letter postmarked September 8, 2016, the Appellant provided the following additional information:

- Appellant reiterated the same points already submitted with the administrative review request, primarily that the Appellant stands strong that the accusations are false.
- In support of its contentions, the Appellant submitted 15 letters from customers stating that they were not aware that they could only charge a certain amount or use the EBT card only certain times a day.
- The Appellant also submitted a one-page document entitled, “Compliance: SNAP, WIC State wide Regulations agreement.” This document indicates that the employee whose signature is at the bottom has read and will follow all rules implemented by FNS.

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 presented, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on 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 questionable transactions cited in the charge letter were the result of trafficking?

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm’s EBT transactions, but also

information obtained from a June 21, 2016 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:

- Community Mini Market is a small grocery store, roughly 1,500 square feet in size, operating in an urban, commercial area of Paterson, New Jersey.
- At the time of the visit, the firm had no shopping carts for customer use, but did have two hand-held shopping baskets.
- The store visit photographs show one cash register and one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as tobacco products and other miscellaneous household merchandise.
- The firm also sells hot food, such as hot sandwiches, which are not eligible for purchase with SNAP benefits. The store also offers freshly made hero sandwiches with lettuce and tomato. Hero sandwiches range in price from \$1.99 for a veggie hero to \$4.95 for a turkey, ham, and cheese hero. Deli meat and cheese is also sold by the pound, but neither the menu board nor the deli items themselves listed any prices.
- The checkout area consists of a very small countertop (approximately 18 inches by 24 inches) where items can be placed to be rung up. The cash register and cashier are located through a Plexiglas window. The cramped checkout area is not suitable for conducting large or rapid transactions as there is no conveyor belt to expedite the purchase and not enough space to place more than a few small items.
- There is no indication from the store visit report that the firm has a special pricing structure, although judging by the photographs, most items in the store appear to end in 9, such as \$0.99, \$1.99, \$3.49, etc.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small grocery store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available food was primarily of a low-dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk items. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

### **SNAP Transaction Analysis**

**Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value.** 7 USC 2018 (b)(7)(e).

As noted earlier, the contractor's store visit photos indicate that Community Mini Market does not seem to employ any kind of obvious pricing structure. If such a structure exists, it was not visible in any of the photos.

The Appellant has argued that the store has daily sales, such as "2-for-1", or "5-for-10." The Appellant claims that in such instances, the transactions will have zero cents. The Appellant further states that sometimes the firm will waive the cents if they are regular customers.

Unfortunately, the Appellant has offered no evidence to support its contentions, such as copies of cash register receipts or other documentation to show what was actually purchased in the transactions listed in the charge letter. Without such evidence, this review cannot reasonably conclude that the large number of .00 and .50 transactions are legitimate. Additionally, the store visit report and photographs give no indication that the firm had "2-for-1" or "5-for-10" sales or any other kind of sales that would result in such frequent same-cents transactions. The only advertised sale on the day of the store visit was one in which a customer could purchase two jars of Hellmann's Mayonnaise and save \$1.00 off the total price.

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e).

**Charge Letter Attachment 2: Multiple purchase transactions were made too rapidly to be credible.** 7 USC 2018 (b)(7)(e).

It is important at this point to reiterate that the store does not have any shopping carts, scanning equipment, or conveyor belts to help expedite large purchases. Additionally, fresh fruits and vegetables as well as deli meats and cheeses almost certainly have to be weighed at the point of sale, which adds additional time to the transactions. Without scanning equipment, store personnel or customers have to separate SNAP-eligible items from nonfood items at the checkout counter. Food items are then paid for with the EBT card and nonfood items are paid for with cash or credit card. All of these steps take time. And the larger the transaction, the longer it takes to process. It should also be noted that this store has only one cash register and one EBT point-of-sale device.

Therefore, in the transactions noted in Attachment 2, it does not seem to be logistically possible for SNAP households and the store personnel to conduct the following action steps in the short amount of time noted in the charge letter:

- Transport the large number of items to the checkout area without the benefit of a shopping cart;
- Place each item on the very limited counter space for processing;
- Separate food items from non-food items;
- Weigh fresh fruits and vegetables;
- Enter the price of each food item into the cash register by hand;
- Bag the food items and move them away from the checkout area;
- Process the sale of food items on the EBT point-of-sale terminal;
- Process the sale of nonfood items; and

- Complete all of these steps only moments after a previous transaction.

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e). And those large stores almost always have conveyor belts, scanning equipment, computerized weighing equipment, shopping carts, and either bagging carousels or additional store personnel to help bag large numbers of items. The scanning equipment also automatically separates food items from nonfood items.

The Appellant has not offered any contentions or documentation to counter the specific transactions cited in Attachment 2. Such evidence could have included itemized cash register receipts or other documentation to prove that the transactions were legitimate purchases of eligible food. The Appellant only argued that the firm does not have any control over how customers spend their benefits. The Appellant also argued that it was not aware that USDA had established any limitations on how customers spend their benefits. These arguments will be addressed later in this document.

Without any evidence or valid contentions from the Appellant, the transactions cited in Attachment 2 stand out as extremely unusual. 7 USC 2018 (b)(7)(e). The very limited counter space only adds to the logistical difficulty of processing large amounts of food. As such, it is reasonable to conclude that the transactions cited in Attachment 2 were the result of trafficking.

**Charge Letter Attachment 3: Multiple transactions were made from individual benefit accounts in unusually short time frames.** 7 USC 2018 (b)(7)(e).

The transactions cited in Attachment 3 are noteworthy because they are highly irregular and stand out significantly from normal shopping patterns at small grocery stores such as Community Mini Market. As noted earlier, the store visit photographs show a small store with a moderate amount of staple food inventory, most of which is low-priced or single-serving items. 7 USC 2018 (b)(7)(e). In comparison with other area stores, the firm offers no great variety of products, price advantage, or significant bulk items for sale.

As with Attachment 2, the Appellant's only argument for the unusual transactions in Attachment 3 is that the firm has no control over how a SNAP household spends its benefits. This contention will be addressed later. As with the earlier attachments, the Appellant has provided no evidence, such as cash register receipts, to show that the transactions cited in Attachment 3 were legitimate purchases of eligible food. Without some kind of documentation to support the Appellant's claims, it is reasonable for this review to conclude that the inexplicable transactions cited in Attachment 3 are the result of trafficking.

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions to avoid detection, a firm's explanation for why these large, repetitive SNAP transactions from individual accounts are occurring in a convenience store should be both rational and compelling. The Appellant's contentions in this regard are neither.



**Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts.** [7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)]. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the absence of shopping carts and the store's severely constricted checkout area.

[7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)]. Based on the characteristics of the store it is not credible that the Appellant would so frequently conduct transactions that more closely resemble those of a supermarket or superstore. It is not plausible that the firm's customers would carry large amounts of merchandise around the store without the benefit of shopping carts, especially since larger, better stocked stores are in the vicinity of the Appellant firm. According to agency records, there are 79 SNAP-authorized retail stores of equal or greater size within one mile of the Appellant firm, including four superstores, six supermarkets, one large grocery store, and numerous small and medium grocery stores.

In reviewing the contractor's store visit photos and report, it is difficult to comprehend what would lure a household to spend large amounts of SNAP benefits in a small grocery store with no shopping carts rather than going to a nearby supermarket or superstore where prices are likely lower, where inventory is significantly larger, and where shopping carts would help facilitate the purchase of large numbers of items.

It is particularly troubling to note some of the repetitive transaction amounts listed in this attachment. [7 USC 2018 (b)(7)(e)]. There is almost nothing about these transactions that would suggest that these were legitimate purchases of eligible food. For example, the firm does not sell large, bulk packages of food (such as meat or seafood) with a specific pricing structure. Instead, the firm is a typical small grocery store, with an inventory consisting primarily of low-priced or single serving items. [7 USC 2018 (b)(7)(e)].

As with the other charge letter attachments, the Appellant has not offered a single piece of evidence, such as itemized cash register receipts, to prove that these were legitimate transactions. The only argument from the Appellant is that the firm has no control over how a SNAP household spends its benefits. This contention will be addressed in the next section.

It is noted that stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Community Mini Market, with its primarily low-dollar inventory, lack of shopping carts, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 4. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has satisfactorily demonstrated that Community Mini Market likely trafficked in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut such a claim. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

### **Store Cannot Control SNAP Household Spending Habits**

In explaining why it believes the allegations of trafficking are false, the Appellant has argued that it does not have any control over how SNAP customers spend their benefits, including how much or how often. The Appellant states that it had no idea that there was a limit on how many times a customer could make a purchase with their EBT card or how much they could spend. The Appellant contends that if these are actual rules or regulations, it would like to know, as neither the firm nor the customers were aware of such rules.

In support of this contention, the Appellant submitted 15 letters from apparent SNAP customers who stated that they were not aware that they were only permitted to charge a certain amount or use the EBT card at certain times of the day. Each of the 15 customer statements used the same language:

*...As soon as I have money in my EBT card I purchase as much as I can adding up the amount of the purchases up to \$150 or more in one day. This store has all I need in groceries so I do not need to buy in a supermarket, or anywhere else. Community Mini Market has always groceries in stock, and has all or more of products I need. They always put up specials for example 2 for 1 price or 10 for 1 price.*

*I was never aware if I purchased more than a certain amount a store would be violating any regulations. Please be advised Community Mini Market is my store, and I use my EBT card only when I purchase, and how many times I purchase.*

With regard to this contention, it should be noted that SNAP regulations do not limit the number of transactions that can be made by SNAP households or mandate how large the individual transactions can be. Regulations also do not dictate certain times of the day that SNAP benefits can be used. 7 USC 2018 (b)(7)(e).

It is worthwhile to restate here that in an appeal of adverse action an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative action should be reversed. In a case such as this one, which is based on an analysis of transaction data, an Appellant must prove, through a preponderance of evidence, that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to that which is provided by the Retailer Operations Division, the determination made by the Retailer Operations Division must be sustained.

With regard to the 15 customer statements submitted by the Appellant, which imply that the questionable transactions from the charge letter were legitimate and that no trafficking occurred, it should be noted that customers engaging in trafficking would be unlikely to admit to this behavior. Instead, it is probable that written customer statements would attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate.

Therefore, the customers' statements and the Appellant's contention that it cannot control the spending habits of SNAP households do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **No Prior Violations**

The Appellant contends that it has always followed SNAP rules and regulations and argues that it has never had anything like this happen before. This contention implies that because the firm has been compliant with SNAP rules and regulations in the past or has not been charged with any previous violations, that the charges should be dismissed or reduced.

However, the law requires that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B). As described earlier, this review has determined that the Retailer Operations adequately demonstrated that the Appellant firm was likely trafficking in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut the agency's position. In accordance with regulation, permanent disqualification is the appropriate penalty.

Therefore, the Appellant's contention that it has been compliant with SNAP regulations in the past does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Hardship to SNAP Recipients**

The Appellant contends that the privilege of being SNAP-authorized is something that it does not want taken away. It claims that the customers need this benefit in the store. This contention implies that SNAP recipients will experience hardship if the firm is disqualified.

With regard to this contention, it is recognized that some degree of inconvenience for SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its SNAP benefits elsewhere. However, as noted earlier, agency records reflect at least 79 comparable or larger SNAP-authorized stores located within a one-mile radius of the Appellant firm, including four superstores and six supermarkets.

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 also clear that a civil money penalty for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

Therefore, the Appellant's contention that the firm's customers will be adversely affected if the firm is disqualified does not provide a valid basis for dismissing the charges or for

mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulation at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes as required by the regulation. As noted earlier, the Appellant did not respond to the charge letter, so it missed the 10-day timeframe for requesting a civil money penalty and submitting required documentation.

The Appellant claimed that the reason it did not respond to the charge letter is that the letter was initially delivered to a neighbor and that it did not know of its existence until the neighbor gave the Appellant the charge letter on August 18, 2016. However, evidence in the case record does not support this claim. All FNS charge letters are delivered by courier service and all are tracked. According to tracking records, the charge letter was not given to a neighbor, but was delivered inside Community Mini Market on August 18 and signed for at 9:34 a.m.

In its request for administrative review, the Appellant submitted a one-page document entitled, "Compliance: SNAP, WIC State wide Regulations agreement." This document, dated January 1, 2016, indicates that the employee whose signature is at the bottom has read and will follow all rules implemented by FNS. It should be noted that the only signature on the document is that of the store owner. The form was not signed by any other employees.

Despite the inclusion of this document in the Appellant's request for administrative review, no specific request for a civil money penalty was ever made, and as noted, nothing was submitted by the Appellant within the required 10-day timeframe. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

### **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Community Mini Market from SNAP participation. This data provided sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to trafficking as the most

likely explanation. 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 occur as determined by the Retailer Operations Division. Based on the analysis above, the decision to impose a permanent disqualification against the Appellant, Community Mini Market, 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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

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JON YORGASON  
ADMINISTRATIVE REVIEW OFFICER

February 27, 2017  
DATE