

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

Creekside Grocery,

Appellant,

v.

Case Number: C0200051

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 to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Creekside Grocery by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Creekside Grocery on September 6, 2017.

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.

CASE CHRONOLOGY

In a letter dated June 23, 2017, the Retailer Operations Division informed the Appellant that Creekside Grocery was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In telephone responses and written letters to the Retailer Operations Division dated June 27, 2017, June 29, 2017, July 3, 2017, July 17, 2017, July 21, 2017, and July 31, 2017, the Appellant, through an interpreter, denied the trafficking allegations and provided various

explanations for the questionable SNAP transactions that were outlined in the June 23, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated September 6, 2017, informing the Appellant that Creekside Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked September 20, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated September 26, 2017.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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(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, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

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 § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added].

(iii) 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 penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from September 2016 through February 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes;
- There were transactions in which the majority or all of an individual recipient's benefits were exhausted in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the Charge Letter and in the review request postmarked September 20, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Creekside Grocery.
 - Some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Creekside Grocery accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments.
 - Most of the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers making purchases at the beginning of the month when EBT funds become available. Creekside Grocery has a limited number of SNAP customers in the neighborhood that walk to the store three to four times throughout the day. Some of these transactions were for bulk purchases of meats such as chicken that were entered into the cash register separately rather as one large transaction. In addition, only eight violations listed in Attachment 1 occurred in an unusually short period of time which can be attributed to billing errors or customer errors entering their EBT PINs. To prevent such prevalent technical issues, Creekside Grocery registered a ticket with SPATCO Solutions to have the cash register repaired.
 - With regard to the transactions in which the majority or all of an individual recipient's benefits were exhausted in unusually short timeframes, Creekside Grocery reasons that families with income remaining after accounting for household expenses receive a benefit that is less than the maximum and are expected to make food purchases with their own funds. Since EBT payments are issued once per month, households choose to spend all of their allotment upon receipt and make later purchases with their own funds. As is indicated in Mathematica tabulation of "SNAP Program Quality Control data and ALERT data Fiscal Year 2009", 16.9% to 18% of EBT recipients use all of their allotments within a week or less. Of the eight violations within Attachment 2 of the Charge Letter, there are only two households that have frequently exhausted their EBT benefits all at once at Creekside Grocery.
 - The excessively large purchase transactions are the result of Creekside Grocery being a premier grocery store and offers fresh produce, fine meats, seafood, locally baked goods, artisan bread, deli counter items, and a vast variety of other food products.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).** Similar findings

were provided in the government report “USDA FNS Benefit Redemption Patterns in the SNAP”.

- The Appellant welcomes an undercover investigation of Creekside Grocery by FNS to prove that the store does not traffick SNAP benefits.

In support of the Appellant’s contentions, the following documents were submitted to FNS:

- EBT Receipts for SNAP purchases that were conducted at Creekside Grocery during the review period;
- Vendor invoices/receipts for product purchases made during the review period;
- An e:mail message (dated September 18, 2017) from a representative of SPATCO Energy Solutions to the Appellant indicating that a new Ruby CI was installed at Creekside Grocery;
- Signed and notarized affidavits from three SNAP customers;
- A photo of a cooler (containing drinks) with a flyer posted on it stating/outlining “What can you buy with SNAP Benefits?;
- A copy of Mathematica tabulation of “SNAP Program Quality Control data and ALERT data Fiscal Year 2009”; and
- A copy of the government report “USDA FNS Benefit Redemption Patterns in the SNAP”.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Creekside Grocery as a convenience store on June 16, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 27, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 2,000 square feet in size and it does not have a storage area/room outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One optical scanner;
- Typical convenience store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- No meat/seafood specials or bundles that might sell for high prices;
- Many of the store shelves were partially stocked with food items pushed to the front in an attempt to make the shelves look more fully stocked;
- There were two empty coolers;

- Not a WIC Program vendor and does not sell any infant foods or infant formula;
- Only one expensive staple food in stock which is take-and-bake pizza;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk and grocery package deals;
- Limited checkout counter area and there are miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream and take-and-bake pizza;
- No fresh or frozen unprocessed meats, poultry, or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- Meat items include canned/potted meat, canned fish, and meat jerky. The store also stocked a minimal variety and amount of eggs, packaged lunch meat, bacon, and sausage;
- A kitchen in which hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold. A menu board is posted in the store advertising a large variety of these foods with their prices to include such items as pizza, fried chicken tenders, fried chicken, corn dogs, french fries, breaded chicken sandwiches, chicken wings, mozzarella cheese sticks, catfish nuggets and breakfast foods (i.e., biscuits, fried eggs, bacon, sausage, bologna, chicken tenderloin, ham steak, etc.). Many of these foods are kept in a heated food bar/case for self-service by customers;
- Tables with chairs available to customers for use in eating their on-site prepared and cooked hot and cold prepared, ready-to-eat foods that are intended for immediate consumption;
- No fresh produce;
- A minimal variety and amount of canned fruits and canned vegetables;
- Other staple foods available for purchase include such items as milk, cheese, 100% juice, soup, pasta, rice, cereal, flour, corn meal, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, coffee, and tea; and
- A large supply of ineligible nonfood items such as hot foods, tobacco products, health and beauty items, paper products, housewares, household cleaning supplies, over-the-counter medications, automotive supplies, gasoline, smoking pipes, cell phone accessories, sunglasses, alcohol, lottery tickets, gift items, souvenirs, greeting cards, gambling machines, etc.

This documentation reflects that the firm was a typically stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Whitfield County, Georgia (the county in which Creekside Grocery is located) during the analysis period was \$7.39, reflecting that large purchases are not routinely made in such stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Charges

Regarding the Appellant’s contention that he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Credit Transactions

The Appellant contends that some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Creekside Grocery accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant did not provide FNS with any information or documentation to support his credit extension contention. Therefore, FNS properly determined that the Appellant's claim of credit extension was insufficient to support his credit extension contention for the following reasons:

- The Appellant provided no documentation to validate that Creekside Grocery had issued credit to SNAP customers. The Appellant only provided FNS with a statement that some of the questionable SNAP transactions were the result of credit extension to SNAP customers;
- The Appellant did not provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended;
- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- No documents were provided that validate whether the alleged credit was paid off by cash, credit card or SNAP benefits;
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that validates that the credit extended to each SNAP customer was done so during the six month review period; and
- No documentation was provided that validates the amount of credit that was extended to each customer during the six month review period.

In conclusion, although Creekside Grocery may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, there was no evidence submitted to support the Appellant's contention that some of the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 8 transaction sets (17 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that most of the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers making purchases at the beginning of the month when EBT funds become available. Creekside Grocery has a limited number of SNAP customers in the neighborhood that walk to the store three to four times throughout the day. Some of these transactions were for bulk purchases of meats such as chicken that were entered into the cash register separately rather as one large transaction. In addition, only eight violations listed in Attachment 1 occurred in an unusually short period of time which can be attributed to billing errors or customer errors entering their EBT PINs. To prevent such prevalent technical issues, Creekside Grocery registered a ticket with SPATCO

Energy Solutions to have the cash register repaired. However, the Appellant's contentions are not supported by available evidence.

The Appellant contends that that most of the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers making purchases at the beginning of the month when EBT funds become available. According to a June 2006 study entitled "An Analysis of Food Stamp Benefit Redemption Patterns" prepared by USDA FNS, typical EBT purchases are small (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and 63 percent of SNAP recipients use more than half of their SNAP benefits in the first week after benefit issuance and 56 percent use more than 90 percent of the household benefits within two weeks of benefit issuance. While it is true that most SNAP recipients typically use more than half of their benefits in the first week after benefit issuance, this does not validate that the SNAP transactions listed in Charge Letter Attachment 1 were legitimate purchases of eligible food products with SNAP benefits.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Creekside Grocery is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, only a minimal variety and amount of canned fruits and canned vegetables, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for convenience stores to have purchases such as those cited, especially when Creekside Grocery stocks only one high priced food item so the majority of food items stocked at the store are low priced items.

The Appellant also contends that some of these questionable SNAP transactions were for bulk purchases of meats such as chicken that were entered into the cash register separately rather as one large transaction. However, at the time of the store visit the contracted Reviewer noted that there was no evidence of: (1) A wholesale business; (2) That Creekside Grocery offered/sold meat or seafood bundles or in bulk; or (3) That Creekside is a specialty store (such as a butcher shop or meat supplier) that primarily sells one type of food (meats). In addition, the store visit observations revealed that Creekside Grocery did not post any signs or flyers inside or outside of the store advertising to customers the availability of any special food packages, bundles, case or bulk food sales, or other types of food special sales that would explain these questionable SNAP transactions. At the time of the store visit, the only meats in stock were canned/potted meat, canned fish, and meat jerky. In addition, there were only five dozen eggs, one package of lunch meat, one package of bacon, and two packages of sausage in stock. The store visit observations indicate that Creekside Grocery does not stock a large enough supply of meats that can be offered to customers "in bulk". While the vendor invoices provided by the Appellant indicate that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in meat products had been purchased for Creekside Grocery during the review period, the meat products included such items as crispy chicken

breast, crispy tenders, sliced bacon, pork loin slices, bologna slices, sausage patties, country ham, and other cooked food items. However, these food items are used in the preparation of hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation. These foods are prepared on-site and are not eligible for purchase with SNAP benefits. The Appellant did not provide FNS with any evidence to support his contention that some of these questionable SNAP transactions were for bulk purchases of meats such as chicken that were entered into the cash register separately rather as one large transaction.

The Appellant also contends that only eight of the violations listed in Attachment 1 occurred in an unusually short period of time which can be attributed to billing errors or customer errors entering their EBT PINs. To prevent such prevalent technical issues, Creekside Grocery registered a ticket with SPATCO Energy Solutions to have the cash register repaired. In support of this contention, the Appellant provided FNS with an e:mail message (dated September 18, 2017) from a representative of SPATCO Energy Solutions to the Appellant indicating that a new Ruby CI was installed at Creekside Grocery. However, this information/documentation does not validate that the questionable SNAP transactions listed in Attachment 1 of the Charge Letter are the result of sales of eligible staple foods to SNAP customers and not the result of trafficking in SNAP benefits.

With regard to the Appellant's contention that in order to prevent technical issues at Creekside Grocery he had the cash register repaired, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that he has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

A review of client shopping data for the review period shows that clients shopping at Creekside Grocery are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Creekside Grocery, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 15 SNAP authorized retailers located within a 2.0 mile radius of the firm that can meet the nutritional needs of SNAP customers. These authorized stores include 7 convenience stores, 3 combination grocery stores, 1 small grocery

store, 3 supermarkets, and 1 super store. Several of these authorized SNAP stores are larger than Creekside Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Creekside Grocery during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Creekside Grocery's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Creekside Grocery or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Majority or All SNAP Benefits Exhausted

Charge Letter Attachment 2 documents 8 suspicious transaction sets **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by two different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

The Appellant contends that with regard to the transactions in which the majority or all of an individual recipient's benefits were exhausted in unusually short timeframes, Creekside Grocery reasons that families with income remaining after accounting for household expenses receive a benefit that is less than the maximum and are expected to make food purchases with their own funds. Since EBT payments are issued once per month, households choose to spend all of their allotment upon receipt and make later purchase with their own funds. As is indicated in Mathematica tabulation of "SNAP Program Quality Control data and ALERT data Fiscal Year 2009", 16.9% to 18% of EBT recipients use all of their allotments within a week or less. Of the eight violations within Attachment 2 of the Charge Letter, there are only two households that have frequently exhausted their EBT benefits all at once at Creekside Grocery. In support of these contentions, the Appellant provided FNS with a copy of Mathematica tabulation of "SNAP Program Quality Control data and ALERT data Fiscal Year 2009", a copy of the government report "USDA FNS Benefit Redemption Patterns in the SNAP", and signed and notarized affidavits from three different SNAP customers (two of which were the SNAP customers who made the questionable SNAP transactions listed in Charge Letter Attachment 2). However, the Appellant's contentions are not supported by available evidence.

In support of his contention that only two households have frequently exhausted their EBT benefits all at once at Creekside Grocery, the Appellant provided signed and notarized affidavits from three different SNAP customers—two of which were the SNAP customers who made the questionable SNAP transactions listed in Charge Letter Attachment 2. With regard to the contention that there were only two SNAP households that frequently exhausted their

benefits all at once at Creekside Grocery, it appears that the store may be trafficking SNAP benefits with a small group of SNAP recipients. However, even if only **one SNAP customer** was allowed to traffick SNAP benefits at Creekside Grocery only **one time** during the six month review period and for **any amount of money (even one cent)**, this would still be a violation of the SNAP regulations at 7 CFR § 271.2 and the Food and Nutrition Act of 2008 at 7 U.S.C. § 2021(b)(3)(B) warranting a permanent SNAP disqualification.

With regard to the three customer affidavits provided by the Appellant which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP customer to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer affidavit provided would attest to questionable transactions being legitimate.

The Appellant contends that according to Mathematica tabulation of “SNAP Program Quality Control data and ALERT data Fiscal Year 2009”, 16.9% to 18% of EBT recipients use all of their allotments within a week or less. With regard to the Appellant’s contention, a June 2006 study entitled “An Analysis of Food Stamp Benefit Redemption Patterns” prepared by USDA FNS, typical EBT purchases are small (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) and SNAP benefits are spent throughout a given month--63 percent of SNAP households use more than half of their benefits in the first week after issuance and over half (56 percent) use more than 90 percent of the household benefits within two weeks after issuance. The study also found that “Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases” while “less than 6 percent never shopped at supermarkets.”

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

However, the USDA study also indicates that most SNAP benefits are redeemed at supermarkets. Supermarkets generally provide the widest range of high-quality foods at reasonable prices. Although access to supermarkets may be limited in some areas, most low-income shoppers redeem most of their SNAP benefits in supermarkets. As indicated in Figure 3 below, supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases. Large and small grocery stores accounted for about 8 to 10 percent of EBT transactions and 4 to 6 percent of the total value of benefits redeemed. Over 46 percent of SNAP households shopped exclusively at supermarkets; less than 6 percent never shopped at supermarkets.

5 U.S.C. § 552 (b)(7)(E).

The results found in this study directly contradict the transactions cited in this Attachment. It is very unusual for EBT recipients to redeem a majority or all of the household's monthly benefits in a single transaction or in a single day. Most households make small transactions and redeem their benefits throughout the month. In addition, most recipients redeem a majority of their household benefits at supermarkets and very few avoid supermarkets all together. Considering that the subject store is a convenience store with limited food stock, the transactions cited in Charge Letter Attachment 2 are highly unusual. The below table shows the questionable SNAP transactions conducted at Creekside Grocery by the two SNAP customers during the review period. Note that seven of the SNAP purchases are for the exact same amount- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions are highly suspicious and a good indicator of trafficking.

5 U.S.C. § 552 (b)(7)(E).

Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a minimally stocked convenience store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same. In addition, there are 15 stores located within a 2.0 mile radius of Creekside Grocery that are authorized to participate in the SNAP where SNAP households can and do shop. However, these other authorized SNAP stores do not display EBT transaction patterns similar to those displayed by Creekside Grocery.

The Appellant did not provide any compelling justification as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at Creekside Grocery or evidence that all of the irregular transactions cited in Charge Letter Attachment 2 were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions

Charge Letter Attachment 3 lists 111 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, there is no indication from the store visit report that Creekside Grocery would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of Creekside Grocery being a premier grocery store and offers fresh produce, fine meats, seafood, locally baked goods, artisan bread, deli counter items, and a vast variety of other grocery items. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Similar findings were provided in the government report "USDA FNS Benefit Redemption Patterns in the SNAP". However, the Appellant's contentions are unsubstantiated.

Regarding the Appellant's contention that the excessively large purchase transactions are the result of Creekside Grocery being a premier grocery store and offers fresh produce, fine meats, seafood, locally baked goods, artisan bread, deli counter items, and a vast variety of other grocery items, the store visit observations of February 27, 2017 indicate that there is no traditional "deli" section or counter in Creekside Grocery and the store does not sell deli meats and cheeses by the pound. In fact, there was only one package of deli/lunch meat in stock. In addition, there were no fresh or frozen unprocessed meats, poultry, or seafood in stock. There was only one package of bacon and two packages of sausage in stock. The only other meat items in stock were canned/potted meat, canned fish, and meat jerky. There were no signs or posters in the store that advertised the availability of any fresh or frozen unprocessed meats, poultry, or seafood for purchase. In addition, the Appellant did not provide FNS with any documentation that validates his contention that Creekside Grocery has a deli counter or that it offers deli meats and cheeses for sale. The review period vendor invoices provided by the Appellant validate that the majority of the meats that were purchased for Creekside Grocery were for such items as crispy chicken breast, crispy chicken tenders, bacon slices, pork loin slices, bologna slices, sausage patties, country ham and other cooked food items. All of these foods are used in the preparation of hot and cold prepared, ready-to-eat foods that are intended for immediate consumption. Per the SNAP regulations, these ready-to-eat foods are not eligible for purchase with SNAP benefits.

As indicated in Figures 4, 5, 6 and 7 below, there is no traditional "deli" section in Creekside Grocery. However, the store has a kitchen in which a variety of hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold. A menu board is posted in the store advertising a large variety of these foods with their prices. Examples of these foods include pizza, fried chicken tenders, fried chicken, corn dogs, french fries, breaded chicken sandwiches, chicken wings, mozzarella cheese sticks, catfish nuggets and breakfast foods (i.e., biscuits, fried eggs, bacon, sausage, bologna, chicken tenderloin, ham steak, etc.). Many of these foods are kept in a heated food bar/case for self-service by customers. Per the SNAP regulations, these hot and/or cold prepared foods are not eligible for purchase with SNAP benefits.



Figure 1: A large variety of hot and/or cold foods ready for immediate consumption are prepared and sold at Creekside Grocery.



Figure 2: Menu Boards listing hot and/or cold foods ready for immediate consumption that are prepared and sold at Creekside Grocery.



Figure 3: A variety of hot chicken dishes are prepared on-site at Creekside Grocery.

BREAKFAST MENU

BISCUITS	MEAT ONLY	PRICE	EGG	CHEESE
BUTTER		0.99	1.39	1.79
JELLY		1.19	1.39	1.79
FRY EGG		BREAD	1.99	2.39
BACON	0.99	1.59	1.99	2.29
SMOKED	0.89	1.49	1.89	2.19
SAUSAGE/RED				
BOLONGA	0.89	1.59	1.99	2.29
SAUSAGE	0.89	1.49	1.89	2.19
HOME MADE	0.99	1.79	2.19	2.49
SAUSAGE				
REG HAM	0.99	3.99 1.59	2.09	2.39
STEAK	0.99	2.09	2.49	2.89
TENDERION	1.39	2.19	2.59	2.89
CHICKEN	1.49	2.49	2.99	3.29
GRAVY		1.89		
BISCUIT				
SMALL PLATE		BISCUIT, GRAVY & EGG		2.99
BIG PLATE		BISCUIT, GRAVY, EGG & BACON		3.99
BLT		BREAD, BACON, TOMATO, MAYO	2.99	3.29
8 OZ CUP		1.29		
GRAVY				

HOME MADE BISCUITS

CREEKSIDE GROCERY

Figure 4: Sign listing Breakfast Menu/Foods available for purchase at Creekside Grocery.

In addition, the store visit observations indicate that there was no fresh produce or frozen fruits or vegetables in stock. In fact, there was only a minimal variety and amount of canned fruits and vegetables in stock. With regard to locally baked goods and artisan bread, the only “breads” in stock were a single loaf of bread and one package of buns. The majority of the store’s bread products were packaged cakes/pastries and snack foods (i.e., chips, crackers, cookies, etc.). With regard to the Appellant’s claim that Creekside Grocery offers a vast variety of other grocery items, the store visit observations indicate that there is a limited stock of “grocery items” in stock. The Appellant did not provide FNS with any documentation that validates his contention that Creekside Grocery offers a vast variety of other grocery items. Many of the review period vendor invoices provided by the Appellant appear to be for the purchase of food items and ingredients that are used in the preparation of the many hot and cold prepared, ready-to-eat foods intended for immediate consumption that are prepared and sold at Creekside Grocery. Per the SNAP regulations, these hot and/or cold prepared foods are not eligible for purchase with SNAP benefits. The review period vendor invoices also validate that a significant volume of convenience foods and beverages were purchased for Creekside Grocery including candy, chips, and carbonated drinks. Figures 8 and 9 below illustrate the limited “grocery item” food stock, the sparsely stocked shelves, and the empty coolers at Creekside Grocery.

Sparsely Stocked Shelves/Empty Coolers: Many shelves in the store are poorly stocked. Many food items are pushed forward on the shelf in order to create the illusion that the shelf is well stocked. There are also two completely empty coolers on the premises.

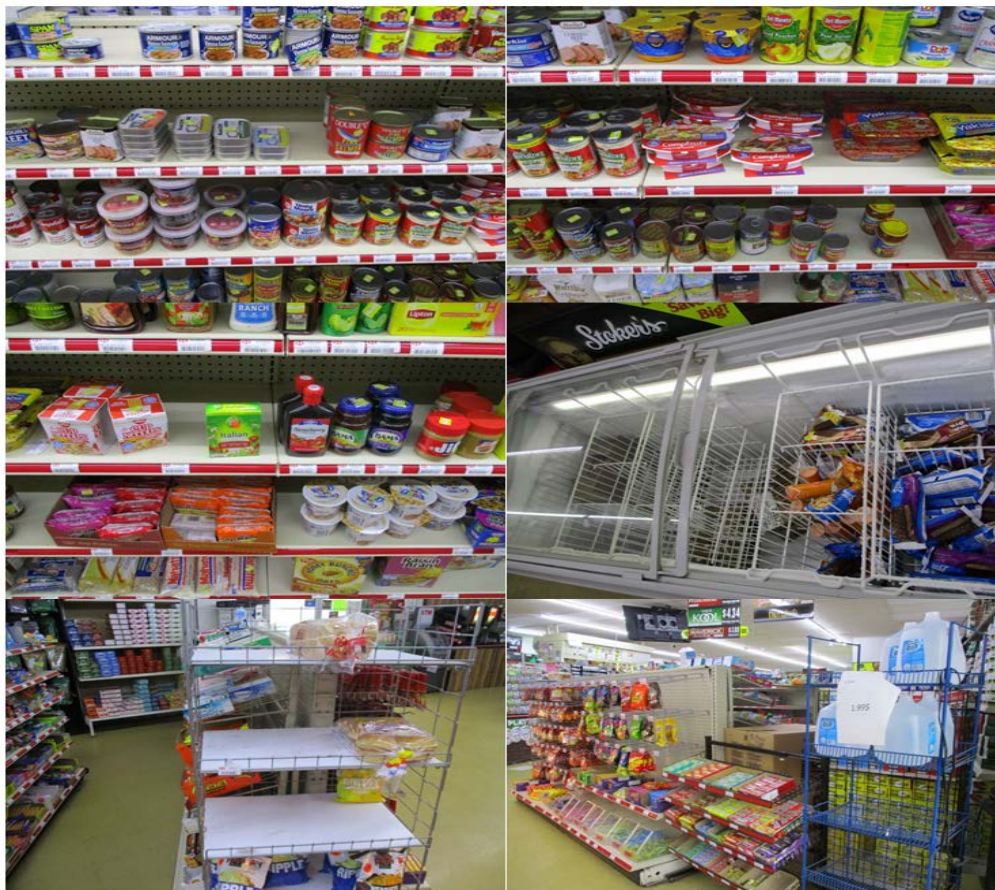


Figure 5: Store shelves sparsely stocked with "grocery items".



Figure 6: Two empty coolers in the store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, as was indicated previously there were 111 excessively large SNAP purchase transactions conducted at Creekside Grocery during the six month review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There is no indication from the store visit report that Creekside Grocery would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. The SNAP transactions listed in Charge Letter Attachment 3 are excessively large, highly suspicious, and indicative of trafficking in SNAP benefits.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Similar findings were provided in the government report “USDA FNS Benefit Redemption Patterns in the SNAP”. However, as was indicated previously, a June 2006 study prepared by USDA FNS entitled “An Analysis of Food Stamp Benefit Redemption Patterns” indicates that SNAP Purchases are typically small--

5 U.S.C. § 552 (b)(6) & (b)(7)(C). **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The study also found that, “Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases” while “less than 6 percent never shopped at supermarkets.” Therefore, the SNAP transactions listed in Charge Letter Attachment 3, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, are excessively large for Creekside Grocery--a minimally stocked convenience store. These large transactions are a good indicator that trafficking of SNAP benefits took place at the store during the review period.

The store visit report and photos show that Creekside Grocery was stocked with a minimal quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only one expensive eligible food in stock that would account for these large amounts as well as showing the store has a limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 15 SNAP authorized retailers located within a 2.0 mile radius of Creekside Grocery. Several of these authorized stores are larger than Creekside Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed

in this Attachment shows that the majority of the households shopping at Creekside Grocery have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellant's location. While Creekside Grocery does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

FNS compared the SNAP transactions conducted at Creekside Grocery during the review period to the SNAP transactions of **superiorly stocked** authorized convenience stores located in the area during the same time period. The comparison indicates that there was a vast difference in ALERT ranking, dollar volume and Scan hits (i.e., multiple purchase transactions made from individual benefit accounts in unusually short timeframes, transactions in which the majority or all of an individual recipient's benefits were exhausted in unusually short timeframes, and excessively large purchase transactions made from recipient accounts). Creekside Grocery greatly outpaced the comparison convenience stores in dollar volume during the review period by having an average transaction amount that is considerably higher (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) than the comparison stores. This is unusual and a good indication that trafficking may have occurred at Creekside Grocery during the review period.

FNS also compared the SNAP transactions conducted at Creekside Grocery during the review period to the SNAP transactions of an average convenience store in Whitfield County, Georgia during the same timeframe. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is important to note that the subject store does not appear to stock any high dollar food items that could explain such differences. This type of transaction activity is unusual and is a good indication that trafficking may have occurred at Creekside Grocery during the review period.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). As indicated in the below bar graph, Creekside Grocery conducted significantly more transactions at each price interval resulting in a significantly higher dollar volume throughout the range of comparison. This type of transaction activity is unusual and a good indication that trafficking may have occurred at Creekside Grocery during the review period.

7 U.S.C. 2018 (b)(6) & (b)(7)(c)

The Appellant provided FNS with 15 pages of EBT/POS receipts for the SNAP purchases that were made at Creekside Grocery during the review period. However, the EBT receipts do not list the individual food items purchased—they only list the total amount of the purchase. As such, the EBT receipts do not validate that they were for purchases of eligible food products and not the result of trafficking in SNAP benefits. Figure 10 below includes an example of the EBT receipts provided by the Appellant.

5 U.S.C. § 552 (b)(7)(E).

The Appellant also provided FNS with vendor invoices/receipts for foods that were purchased for Creekside Grocery during the six month review period in an effort to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred at the store during that timeframe. FNS conducted an analysis of these vendor invoices and determined that a number of the invoices provided by the retailer are for food purchases from food service suppliers that traditionally service restaurants and other prepared/cooked food establishments. An analysis of the invoices from these vendors indicates that:

- IWC Food Service is an independently owned food service company in the Southeast. Per the company's website, the company traditionally offers "customized solutions based industry restaurants..." and other food service venues. Therefore, inventory purchases from this vendor are most likely used for cooked foods offered in Creekside Grocery's kitchen which are made for immediate consumption and are not eligible for purchase with SNAP benefits. The subject store purchased food products from this vendor which include ham, sliced bacon, biscuit dough, sliced pork loin and other food items that are used in the preparation of hot breakfast food items offered in the store's kitchen. These cooked foods are for immediate consumption and are not eligible for purchase with SNAP benefits.
- Presto Food's is a food service vendor that traditionally serves Italian restaurants and pizza shops, per the company's website. Therefore, inventory purchases from this vendor are used in the preparation of cooked and take-and-bake pizza's made in the store's kitchen. The cooked pizzas are for immediate consumption and are not eligible for purchase with SNAP benefits. The take-and-bake pizzas are for at home consumption and are eligible to be purchased with SNAP benefits.
- Sysco offers a worldwide supply chain for distributing food products to restaurants and other food service venues, per the company's website. The subject store purchased frozen food items like "krispy" chicken breast, "krispy" chicken tenders, fish fillets, catfish nuggets, fried cheese sticks and potato wedges that are used in the preparation of cooked foods offered in Creekside Grocery's kitchen which are for immediate consumption and are not eligible for purchase with SNAP benefits.
- Walker Meats is a small meat supply company located in Carrollton, Georgia. Walker Meats is a "restaurant and institution supply business", per the company's website. The subject store purchased sliced bologna, sausage, smoked sausage and sausage patties from this vendor which are used in the preparation of cooked foods offered in Creekside Grocery's kitchen which are for immediate consumption and are not eligible for purchase with SNAP benefits.

An analysis of the vendor invoices provided by the Appellant indicates **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in meat products were purchased during the review period. Again, Creekside Grocery's meat purchases were for food items like "krispy" chicken breast, "krispy" chicken tenders, bacon slices, pork loin slices, bologna slices, sausage patties, country ham and other cooked food items. These items are used in the preparation of breakfast foods and fried chicken meals that are cooked and prepared in the store's kitchen. These foods are not eligible for purchase with SNAP benefits

The Appellant indicated that he sells both “take-and-bake” and “hot ready-to-eat” pizza. The Appellant stated that for every 3 pizza’s sold, 2 are “take-and-bake” pizzas. For calculation purposes, FNS used a 2/3 ratio of take-and-bake to hot pizza sold. FNS totaled the sum of pizza ingredients purchased by the Appellant during the review period

(5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and applied a 2/3rds ratio (2/3 calculated for take-and-bake pizza sales—an EBT eligible food item). FNS then added a 25% mark-up (the mark-up percentage provided by the Appellant) to the take-and-bake calculation in order to gain a better understanding of Creekside Grocery’s eligible pizza sales during the review period.
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

FNS discovered that several of the vendor invoice/receipts provided by the Appellant were incomplete copies, were not actual invoices, or were invoices dated outside of the review period. Therefore, these invoices were not included in FNS’ vendor invoice analysis.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, FNS did not take into account the Creekside Grocery’s cash, debit, and credit sales for the review period. Taking such sales into account would narrow the gap between the store’s eligible inventory purchases and its EBT redemptions.

5 U.S.C. § 552 (b)(7)(E).

It is important to note that even though the vendor invoices provided by the Appellant for the review period indicate that sufficient food inventory had been purchased to account for the firm’s SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day and transactions in which the majority or all of an individual’s SNAP benefits are exhausted in unusually short periods of time. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a minimal variety of stock in the store, no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Creekside Grocery to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at Creekside Grocery compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Creekside Grocery often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they

conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

Undercover Investigation Welcomed

The Appellant stated that he welcomes an undercover investigation of Creekside Grocery by FNS to prove that the store does not traffick SNAP benefits. Although an undercover investigation is not necessary because the raw SNAP transaction data displays compelling characteristics indicative of trafficking, such an investigation at this time is not appropriate as it would be obviously skewed by the Appellant already knowing that the government has its eye on the firm. Rather than the investigation being truly "undercover," the Appellant would be on guard knowing there could be an investigation going on and be diligent in not committing any violations.

CIVIL MONEY PENALTY

As previously indicated, the September 6, 2017 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated June 23, 2017 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type,

size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Creekside Grocery is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is 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.

LORIE L. CONNEEN
Administrative Review Officer

May 15, 2018