

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

DB Mart,

Appellant,

v.

Case Number: C0208818

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 DB Mart 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 DB Mart on June 12, 2018.

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 May 29, 2018, the Retailer Operations Division informed the Appellant that DB Mart 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 a response to the Retailer Operations Division postmarked June 4, 2018, the Appellant denied the trafficking allegations and provided various explanations for the questionable SNAP transactions that were outlined in the May 29, 2018 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated June 12, 2018, informing the Appellant that DB Mart 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 June 22, 2018, 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 July 5, 2018.

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 January 2018 through April 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts within a set period of time; and
- There were excessively large purchase transactions made from recipient accounts.

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.

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 reply to the Charge Letter, in the review request postmarked June 22, 2018, and in a subsequent correspondence dated July 20, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at DB Mart.
- Some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of DB Mart accepting SNAP benefits as repayments on credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments.
- Since being authorized to participate in the SNAP in 2016, DB Mart has not been cited for any prior SNAP violations.
- Regarding the multiple transactions made from individual benefit accounts within a set period of time (Charge Letter Attachment 1):
 - *DB Mart is open 24 hours per day, seven days per week and is located in downtown New London, Connecticut;
 - *Many people do not have cars and there is no public transportation to go to a large store or supermarket to buy their foods. These large stores are miles away;
 - *People shop in groups and one person buys food items with their EBT benefits for themselves and their friends;
 - *Sometimes people borrow food from each other and pay their friends back when their EBT benefits become available;
 - *There is a sitting place in front of DB Mart so people keep purchasing food during the night;
 - *There are housing projects located near DB Mart whose residents purchase foods from the store;
 - *Sometimes when there is construction in the area, people purchase foods at DB Mart;
 - *These transactions occurred at the beginning of the month;
 - *Most of the paired transactions are well under 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It makes sense that a person who is getting 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits per month would immediately go and use them all at once.
- Regarding the excessively large purchase transactions (Charge Letter Attachment 2):
 - *Many people live on state provided benefits so they ask the Appellant to order beef patties, raw chicken, and microwavable prepared foods which they purchase at one time;
 - *Neighborhood stores close at 10:00 pm and DB Mart is open all night. Therefore, customers can come to DB Mart at any time;
 - *DB Mart sells fried chicken which the Appellant puts in the cooler. People purchase the fried chicken when their EBT benefits are available;

*DB Mart sells Ben and Jerrys ice cream, Latino foods, Indian spices, and cold cuts. After people finish their jobs, they come to the store late at night.

- The charges imposed against DB Mart are not based upon actual proof, such as an on-site investigation. The charges are speculative and based solely upon a computer generated analysis.
- The Appellant's counsel requested a telephonic hearing regarding the charges imposed against DB Mart.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized DB Mart as a convenience store on February 18, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 26, 2018 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 1,400 square feet in size with additional food storage outside of public view that is approximately 200 square feet in size. This storage area stocks predominantly drinks;
- No shopping carts and two 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;
- No optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- The four most expensive foods items in stock were jasmine rice at \$7.99 per 5 pounds; canilla rice at \$7.99 per 10 pounds; Ben and Jerrys ice cream at \$6.29 per pint; and Folgers coffee at \$5.99 per 11.3 ounces;
- No telephone orders taken or delivery available to customers.
- There were no fresh or frozen meats, poultry, or seafood;
- Deli meats and cheeses were not sold by the pound;
- Hot foods were sold including fried chicken and empanadas;

- Frozen foods included ice cream, pizza, and Hot Pockets;
- There were units of canned/potted meat, canned fish, canned shellfish, eggs, and meat jerky;
- Dairy included milk and cheese;
- There was no fresh produce;
- Other staple foods available for purchase include such items as juice, pasta, rice, bread, cereal, flour, infant cereal, baking mix, and canned goods;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, coffee, condiments, and vegetable oil; and
- Ineligible nonfood items included tobacco products, health and beauty items, paper products, household cleaning supplies, clothing, lottery tickets, gift items/souvenirs, automotive products, housewares, gift cards, smoking pipes, pet food, gasoline, and jewelry.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why DB Mart's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

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.

Credit Transactions

The Appellant argues that some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of DB Mart accepting SNAP benefits as repayments on credit accounts from area 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 evidence or documentation to support its contention that credit was extended to SNAP customers resulting in some of the questionable SNAP transactions outlined in the Charge Letter Attachments. FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to indicate that it kept records of credit extension to SNAP customers;
- The Appellant did not provide FNS with the names of the SNAP customers to whom credit had been extended to during the review period. In addition, 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 to validate whether the alleged credit was paid off by cash, credit/debit card, personal check, 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 would validate that the credit extended to each SNAP customer was done so during the review period; and
- No documentation was provided that would validate the amount of credit that was extended to each customer during the review period.

In conclusion, although DB Mart may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that 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)

This Charge Letter Attachment documents 16 sets of transactions (36 total transactions) that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits to meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the Charge Letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at DB Mart multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second and third transactions in each set are too large to consist of forgotten items.

The Appellant, through counsel, has provided several contentions related to Attachment 1, including a claim that the transactions are the result of people shopping in groups and one person buys food items with their EBT benefits for themselves and their friends and that sometimes people borrow food from each other and pay their friends back when their EBT benefits become available.

As to whether or not SNAP recipients sharing their EBT cards/SNAP benefits with others actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that sharing of EBT cards/SNAP benefits is particularly common among SNAP recipients in New London, Connecticut. FNS acknowledges that the SNAP regulations and statute do not govern or mandate how or when a SNAP household should spend its benefit allotment. Regulations also do not govern how frequently a customer may visit a store or whether household members should purchase items independently. SNAP benefits are issued to individual households and as such are meant to provide most of the nutritional needs of that household. Although sharing of SNAP benefits can occur, they are not intended to be used by households purchasing eligible food items for other household members or other households. Again, the SNAP regulations do not govern what happens to the food once it is purchased. However, the repetitive nature of the transactions identified in Attachment 1 are vastly different in DB Mart than in any other nearby comparable firm giving credibility to the notion that trafficking is mostly likely taking place.

The Appellant argues that many people do not have cars and there is no public transportation to go to a large store or supermarket to buy their foods. These large stores are miles away. Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 23 SNAP authorized retailers located within a 1.0 mile radius of DB Mart that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than DB Mart 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 DB Mart during the 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 DB Mart's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

One of the Appellant's arguments is that there is a sitting place in front of DB Mart so people keep purchasing food during the night. However, during the store visit of March 26, 2018, the contracted Reviewer observed no area for people to congregate, inside or outside of the store, and that there were no tables or chairs. Additionally, that area residents come to the store to socialize does not necessarily mean that they are making multiple or large purchases at the store.

The Appellant argues that there are housing projects located near DB Mart whose residents purchase foods from the store and that sometimes there is construction in the area resulting in people purchasing foods at the store. FNS does not dispute that DB Mart may be located near housing projects or that occasionally there is construction in the area. However, a review of client shopping data for the review period shows that clients shopping at DB Mart 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 suspiciously high dollar amounts in short timeframes at DB Mart, where the eligible food stock is minimal, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at better stocked stores. This is a strong indicator of trafficking.

The Appellant argues that these SNAP transactions occurred at the beginning of the month. In addition, most of the paired transactions are well under **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It makes sense that a person who is getting **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits per month would immediately go and use them all at once.

Regarding the Appellant's contention that SNAP customers may be depleting their benefit allotments at the beginning of the month in much the same way as people make large purchases on payday, although many SNAP 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 just one or two days, especially from a convenience store that has limited staple food stock and no fresh produce or fresh or frozen meats. A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Depleting one's entire allotment in one or two days, especially in a store such as DB Mart that sells no fresh produce and no fresh or frozen meats, poultry, or seafood, leaving no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP benefit households. Rather, multiple transactions over a short period of time, especially of high dollar value, are indicative of attempts to diminish attention to signs of trafficking.

¹ *Analysis of EBT Benefit Redemption Patterns: Methods for Obtaining, Preparing, and Analyzing the Data*. Report prepared by Abt Associates for the Food and Nutrition Service, USDA, November 2005.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This Charge Letter Attachment lists 108 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in New London County, Connecticut. During the review period, the average transaction amount for a convenience store in New London County, Connecticut was \$8.58. The average transaction in Attachment 2 is more than eight times larger than the average purchase amount for this store type. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. These large transaction amounts are also not consistent with the store's inventory. There were no fresh or frozen meats, poultry, or seafood and no fresh produce. Most of the food products in DB Mart consisted of accessory food items such as snack foods, candy, and soda and inexpensive staple foods such as canned and packaged goods. The frequency of high dollar purchases in the the review period calls into question the legitimacy of these transactions.

The Appellant argues that the excessively large purchase transactions are the result of many people living on state provided benefits so they ask DB Mart to order beef patties, raw chicken, and microwavable prepared foods which they purchase at one time. However, the Appellant provided no evidence to support its contention. The store visit observations and photos indicate that DB Mart stocks no fresh or frozen meats, poultry, or seafood. The only meats/poultry/seafood in stock was canned and dehydrated (jerky). The store also stocked a few dozen eggs. In addition, the only microwavable prepared foods in stock were a few pizzas and individual Hot Pockets. It is important to also note that during the store visit the store owner noted to the contracted Reviewer that DB Mart does not take food orders nor does it deliver foods to customers. Therefore, there is no evidence to support the Appellant's argument.

The Appellant argues that DB Mart sells fried chicken which it puts in the cooler. People purchase fried chicken when their EBT benefits are available. However, the Appellant did not provide any evidence to support this contention. The store visit observations and photos of March 26, 2018 clearly indicate that DB Mart sells hot foods including fried chicken and empanadas. DB Mart has a fully functioning kitchen where these hot foods are prepared, the store has a hot bar to keep these foods warm/hot for purchase, and there was signage in the store advertising the availability of these foods for purchase. However, the SNAP regulations stipulate that hot foods that are intended for immediate consumption and require no additional preparation may not be purchased with SNAP benefits. In addition, there were no signs or flyers posted inside or outside of the store indicating that the in-store prepared hot foods are put in the cooler so that people can later purchase them with their EBT benefits. As such, the evidence indicates that the only fried chicken available for purchase at DB Mart was hot chicken.

The Appellant argues that DB Mart sells Ben and Jerrys ice cream, Latino foods, Indian spices, and cold cuts. After people finish their jobs, they come to the store late at night. The Appellant

provided no evidence to support its argument. While the store visit observations indicate that DB Mart stocks Ben and Jerrys ice cream, there were no specialty or ethnic foods, such as Latino foods and Indian spices, in stock. In addition, the store did not stock any deli meats/cold cuts either packaged or sold by the pound. Most of the food products in DB Mart consisted of accessory food items such as snack foods, candy, and soda and inexpensive staple foods such as canned and packaged goods. The store visit observations indicate that the four most expensive food items in stock were jasmine rice at \$7.99 per 5 pounds; canilla rice at \$7.99 per 10 pounds; Ben and Jerrys ice cream at \$6.29 per pint; and Folgers coffee at \$5.99 per 11.3 ounces. There is no evidence that the excessively purchase transactions listed in the Charge Letter are the result of customers purchasing numerous units of ice cream. In addition, there is no indication from the store visit observations that DB Mart sells any specialty/ethnic food items or cold cuts as claimed by the Appellant.

The store visit report and photographs show that DB Mart was stocked with a minimal quantity and variety of staple foods with no fresh or frozen meats, poultry, or seafood and no fresh produce. The majority of foods stocked at the store were accessory foods such as snack foods, candy, and soda and inexpensive staple foods such as canned and packaged goods. The inventory report and photos also indicate that the store has limited checkout counter space and no shopping carts and only two 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 the Retailer Operations Division compared the Appellant firm, a convenience store, to the six closest authorized convenience stores located within a 1.0 mile radius of DB Mart. DB Mart conducted more suspicious SNAP transactions (i.e., multiple transactions made from individual benefit accounts within a set period of time and excessively large purchase transactions made from recipient accounts) as compared to the six area convenience stores. In addition, the Retailer Operations Division noted that DB Mart had a significantly higher transaction dollar amount and dollar volume in comparison to other authorized convenience stores located in New London County, Connecticut during the review period. These are indicators that trafficking is more likely than not occurring at DB Mart.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at DB Mart 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 DB Mart 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 only two 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/or 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 2 are more likely than not the result of trafficking in SNAP benefits.

First Time Violator

The Appellant contends that since being authorized to participate in the SNAP in 2016, DB Mart has not been cited for any prior SNAP violations. However, a record of participation in the SNAP with no documented previously violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

Computer Generated Analysis

The Appellants argues that the charges imposed against DB Mart are not based upon actual proof, such as an on-site investigation. The charges are speculative and based solely upon a computer generated analysis.

Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis. Once such firms have been identified as potential compliance cases, from approximately 263,105 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's

logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged.

Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail. Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that the charges are speculative and based solely upon a computer generated analysis is not compelling.

Hearing Requested

The Appellant's counsel requested a telephonic hearing regarding the charges imposed against DB Mart. This request cannot be granted. Formal discovery procedures and an adversary hearing are not required by the Food and Nutrition Act nor are they contemplated by the SNAP regulations. However, to complete the record in this regard, it should be added that should the Appellant be dissatisfied with the final determination in this matter following administrative review, the Food and Nutrition Act of 2008 does provide at 7 U.S.C. 2023 the right to judicial review and trial de novo.

CIVIL MONEY PENALTY

As previously indicated, the June 12, 2018 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 May 29, 2018 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 DB Mart 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

October 31, 2018