

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

Deep Creek Mini Mart,

Appellant,

v.

Case Number: C0197748

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 Deep Creek Mini Mart (hereinafter “Mini 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 Mini Mart on March 27, 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 February 24, 2017, the Retailer Operations Division informed the Appellant that his firm 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 telephone conversation with Retailer Operations Division staff on March 6, 2017 and in letters received by the Retailer Operations Division on March 8, 2017 and March 23, 2017, the Appellant, through counsel, cited credit extension to regular SNAP customers as the explanation for the questionable SNAP transactions that were outlined in the February 24, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated March 27, 2017, informing the Appellant that Mini 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 April 6, 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 April 13, 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 § 278.2(f) states, inter alia:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

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 August 2016 through January 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts 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 Appellant's replies to the Charge Letter and in the review request postmarked April 6, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The questionable SNAP transactions listed in the Charge Letter Attachments are the result of Mini Mart accepting SNAP benefits as repayments on credit accounts from regular SNAP customers upon receipt of their monthly EBT benefit allotments;
- When the SNAP customers received their monthly EBT allotment, they would pay off their credit account at Mini Mart and they would make other purchases as well;
- The SNAP violations were the responsibility of a main store clerk who had not received any formal training on the SNAP rules other than a review of which items cannot be purchased with SNAP benefits. The Appellant was unaware that the store clerk was extending credit to SNAP customers during the six month review period;
- This is the first time that the Appellant has been cited for any SNAP violations to include the receipt of a warning letter from FNS;
- The Appellant was unaware that extending credit to SNAP customers is a violation of the SNAP regulations;
- In order to prevent future SNAP violations from occurring at Mini Mart, the Appellant immediately terminated the practice of extending credit to SNAP customers;
- A permanent SNAP disqualification will impose a hardship on several of the SNAP customers who live in the surrounding area as Mini Mart is the nearest retail food store to their homes; and
- The Appellant is requesting that FNS reduce the proposed penalty to a six month SNAP disqualification since Mini Mart had not received any prior warnings or violations from FNS.

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

- A list of 6 customer names (5 of the names included a first and last name and one name included a first name only) with a corresponding telephone number for each customer.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Mini Mart as a convenience store on August 7, 2013. The case file indicates that in reaching a disqualification determination, the Retailer

Operations Division considered information obtained during a February 1, 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:

- Mini Mart is a convenience store that is approximately 2,300 square feet in size and it does not have a storage area outside of the public view;
- Mini Mart is located in an urban area of Burlington, North Carolina;
- There were no shopping carts or hand-held baskets available for customer use;
- Mini Mart has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- At the time of the store visit, Mini Mart had a few coolers/freezers that were not in service (i.e., they were empty);
- Many of the store shelves were empty or scantily filled with food items;
- Mini Mart has a minimal food stock and it offers customers a minimal variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Mini Mart is not a WIC Program vendor and it does not sell any infant foods or infant formula;
- The four most expensive food items stocked at Mini Mart were #10 cans of the following canned foods: Marinara sauce, green beans, dehydrated mashed potatoes, and diced tomatoes. However, the store stocked only a minimal number of each of these canned foods (i.e., between one and three cans of each food). At the time of the store visit, each of these food items was priced at \$7.49;
- It does not appear from the store visit observations that Mini Mart extends credit to SNAP customers;
- There were no signs posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include food combination deals/specials;
- Mini Mart does not have a kitchen or food preparation area and it does not sell any hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation. However, the store manager indicated during the store visit that Mini Mart is planning on selling hot dogs in the future;
- Mini Mart does not have a deli food section and it does not sell deli meats and cheeses by the pound;

- Mini Mart stocks a minimal amount and variety of pre-packaged deli sandwiches that are not prepared on-site;
- The checkout counter has a limited space as it is cluttered with miscellaneous items. As such, it 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;
- Mini Mart did not stock any fresh or frozen meats, poultry, or seafood items;
- Meat items available for sale included a minimal variety and quantity of canned fish, canned/potted meat, pork bacon, eggs, and meat jerky;
- Mini Mart did not stock any frozen fruits or vegetables;
- Mini Mart did not stock any fresh produce items;
- The store did not stock any frozen foods;
- Other staple foods available for purchase include the following food items in minimal quantities: 100% juice, canned fruits and canned vegetables, milk, margarine, packaged cheese, pasta, cereal, corn meal, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, spices, condiments, coffee, vegetable oil, etc.; and
- Mini Mart stocked a large supply of ineligible nonfood items such as tobacco products, hardware items, paper products, household cleaning supplies, health and beauty aids, automotive supplies, infant diapers, pots/pans, incense sticks, over-the-counter medications, clothing, laundry detergent, ice chests, toys, alcohol, gasoline, back packs, American flags, etc.

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 contends that the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Mini Mart accepting SNAP benefits as repayments on credit accounts from regular SNAP customers upon receipt of their monthly EBT benefit allotments. When the SNAP customers received their monthly EBT allotment, they would pay off their credit account at Mini Mart and they would make other purchases as well. 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 provided FNS with the following statement in support of his contention that credit was extended to SNAP customers during the six month review period:

“The credit that was extended to each SNAP customer was documented in a book; however, the page or credit account information was destroyed when the customer paid off the account. As such, we do not have any information on the accounts nor can we recreate them. We have enclosed the names and telephone numbers of six customers that we were able to obtain”.

FNS reviewed the information/statement provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- No documentation was provided to indicate that Mini Mart had an actual credit book/ledger to document the credit extended to each SNAP customer other than his statement of such;
- The list of customer names provided to FNS included only a telephone number for each. As EBT card numbers were not provided, there is no way for FNS to validate if the persons who supposedly purchased food items on credit were indeed SNAP customers;
- No information/documentation was provided that could be used by FNS to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases by individual SNAP customers;

- 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 card or SNAP benefits;
- No documentation was provided that indicates the dates that food items were purchased on credit and the dates when the credit was paid off by each SNAP customer;
- No documentation was provided that would validate that the credit extended to each SNAP customer was done so during the six month review period; and
- No documentation was provided that would validate the total amount of credit that was extended to each customer during the six month review period.

In conclusion, although Mini Mart may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support the Appellant's contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Multiple Transactions Made from Individual Household Accounts in Unusually Short Timeframes (Charge Letter Attachment 1)

Violating stores often conduct multiple transactions from the same household account as a method to avoid detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 1 lists 35 transaction sets (81 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in Alamance County during the review period. 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 the multiple transactions made from individual household accounts in unusually short timeframes are the result of Mini Mart accepting SNAP benefits as repayments on credit accounts from regular SNAP customers upon receipt of their monthly EBT benefit allotments. When the SNAP customers received their monthly EBT allotment, they would pay off their credit account at Mini Mart and they would make other purchases as well. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that maybe purchased, the SNAP transactions noted in the Charge Letter 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. Mini Mart is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood items, no frozen fruits or vegetables, no fresh produce items, and it 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, Mini Mart stocks only a few high priced food items in minimal quantities so the majority of food items stocked at the store are low priced items.

The Appellant contends that Mini Mart is the nearest retail food store for several SNAP customers that live in the surrounding area. However, a review of client shopping data for the review period shows that SNAP clients shopping at Mini 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 suspicious high dollar amounts in short timeframes at Mini Mart, 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 38 SNAP authorized retailers located within a 3.0 mile radius of Mini Mart that can meet the nutritional needs of SNAP customers. These authorized SNAP stores include 3 supermarkets and one super store. As mentioned above, SNAP customers who shopped at Mini Mart 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. It is also important to note that Alamance County, North Carolina offers multiple transportation options to area residents including a service from Alamance County Transport (ACTA) which is a door to door service that includes rides to grocery stores. According to ACTA's website, "Anyone requiring transportation in Alamance County is eligible to ride the ACTA vans. ACTA provides transportation for general purpose trips, medical trips, and almost any non-emergency trip destination. In addition, special programs and pricing are available to qualified riders based on eligibility requirements". Therefore, lack of access to other authorized stores does not appear to be an explanation for Mini Mart'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 Mini Mart 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.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

Attachment 2 of the Charge Letter cites 255 EBT 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 the store 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 Mini Mart accepting SNAP benefits as repayments on credit accounts from regular SNAP customers upon receipt of their monthly EBT benefit allotments. When the SNAP customers received their monthly EBT allotment, they would pay off their credit account at Mini Mart and they would make other purchases as well. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

The store visit report and photos show that Mini Mart was stocked with a limited quantity and variety of staple foods as it stocked no fresh or frozen meats, poultry, or seafood items, no frozen fruits or vegetables, no fresh produce items, and a minimal quantity and variety of processed meats. The inventory report and photos also show that the subject store stocks only a few high priced staple food items (in limited quantities) that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanner, 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 38 SNAP authorized retailers located within a 3.0 mile radius of Mini Mart. Several of these stores are larger than Mini Mart 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 all of the

households shopping at Mini Mart 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 Mini Mart 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.

The Appellant did not submit any vendor invoices to FNS for foods purchased for Mini Mart during the six month review period that may help to substantiate that Mini Mart purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that Mini Mart had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as consecutive transactions by individuals during the same store visit or in a single day. 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 limited variety of stock in the store, no frozen meats/seafood and no fresh meats/seafood, no fresh produce, and no frozen fruits or vegetables, 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 Mini Mart 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 five SNAP households identified in the Charge Letter to analyze their shopping patterns at Mini 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 Mini 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 the average transaction amount 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 offering of no shopping carts or 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.

Appellant Unaware of Credit Extension Practice

The Appellant contends that the SNAP violations were the responsibility of a main store clerk who had not received any formal training on the SNAP rules other than a review of which items cannot be purchased with SNAP benefits. The Appellant was unaware that the store clerk was extending credit to SNAP customers during the six month review period. These contentions cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Mini Mart. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, family member, etc. was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on August 7, 2013, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person signing the Application was aware that violations of Program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that 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...” 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 “Disqualification ... shall be permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store”. In keeping with this legislative mandate, 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.

The Appellant’s implied contention that he was unaware that the store clerk was extending credit to SNAP customers during the six month review period cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

First Time Violator

The Appellant contends that this is the first time that he has been cited for any SNAP violations to include the receipt of a warning letter from FNS. However, a record of participation in the SNAP with no previously documented instance of violations or warning from FNS of possible SNAP violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

Appellant Unaware Credit Extension a SNAP Violation

The Appellant contends that he was unaware that extending credit to SNAP customers was a violation of the SNAP regulations. The Appellant, upon being authorized by FNS to participate in the SNAP on August 7, 2013, received the

same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits “may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit”. As such, the Appellant's contention is unfounded.

Corrective Action Implemented

The Appellant contends that in order to prevent future SNAP violations from occurring at Mini Mart, he immediately terminated the practice of extending credit to SNAP customers. 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.

Permanent SNAP Disqualification Imposes Hardship on SNAP Customers

The Appellant contends that a permanent SNAP disqualification will impose a hardship on several of the SNAP customers who live in the surrounding area as Mini Mart is the nearest retail food store to their homes. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Reduced Penalty Requested

The Appellant is requesting that FNS reduce the proposed penalty to a six month SNAP disqualification since Mini Mart had not received any prior warnings or violations from FNS. However, 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.

CIVIL MONEY PENALTY

As previously indicated, the March 27, 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 February 24, 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 Deep Creek Mini 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN
Administrative Review Officer

January 31, 2018