

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

Eagle Fast Stop #2, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Retailer Operations Division, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**Case Number: C0177738**

**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 Eagle Fast Stop #2 (hereinafter “Fast Stop”) by the Retailer Operations Division (hereinafter “ROD”).

**ISSUE**

The issue accepted for review is whether ROD 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 Fast Stop on February 22, 2016.

**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 4, 2016, ROD informed the Appellants that their 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 letter received by ROD on February 15, 2016, the Appellants denied the trafficking allegations and provided various explanations for the questionable SNAP transactions outlined in the February 4, 2016 Charge Letter.

After giving consideration to the firm's reply and the evidence of the case, ROD notified the Appellants, in a letter dated February 22, 2016, that their store 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 March 8, 2016, the Appellants, through counsel, appealed ROD's assessment and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW**

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

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 or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food ...

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)(iii) states, *inter alia*:

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.

### **SUMMARY OF CHARGES**

The Appellants were charged and determined to be trafficking based on an analysis of EBT transaction data from April 2015 through December 2015. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts in unusually short time frames; and
- There were excessively large purchase transactions made from recipient accounts.

### **APPELLANTS' CONTENTIONS**

The following represents a brief summary of the Appellants 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 response to the specific patterns of EBT transaction characteristics that are indicative of trafficking, the Appellants, through counsel, contend the following:

- The Appellants deny that trafficking of SNAP benefits took place at Fast Stop;
- FNS made its decision to permanently disqualify Fast Stop from the SNAP based solely on a computer generated analysis which is insufficient to reasonably establish any clear and repetitive patterns of unusual, irregular, and inexplicable activity for this type of firm;
- The allegations of “unusual, irregular, and inexplicable activity” (i.e., multiple transactions made from individual household accounts in unusually short timeframes and excessively large purchase transactions) do not meet the definition of trafficking as cited in the SNAP regulations as neither the Appellants nor any of the store’s employees exchanged SNAP benefits for cash;
- This is the first time that the Appellants have been cited for any SNAP violations;
- Prior to receiving the Charge Letter from FNS, the Appellants had never been warned that SNAP violations may be occurring at Fast Stop;
- The multiple transactions made from individual household accounts in unusually short timeframes are the result of: (1) Many SNAP customers having to purchase all of their monthly groceries at Fast Stop because they do not have transportation available to them to reach other authorized SNAP stores; (2) SNAP customers purchasing food items from Fast Stop and then deciding to purchase forgotten items before they leave the store; and (3) SNAP customers asking for food items to be separated so that they can purchase them separately;
- The excessively large purchase transactions are the result of SNAP customers purchasing frozen foods in bulk from Fast Stop such as chicken strips, hot wings, and steak fillets;
- If FNS was to contact SNAP households who frequently purchase food items at Fast Stop with their EBT cards, they would indicate that all of their SNAP purchases are legitimate;
- Even if the Appellants had violated the SNAP regulations, a permanent disqualification from the SNAP is too severe of a punishment for first-time offenders; and
- The Appellants are requesting that FNS consider reversing its decision to permanently disqualify Fast Stop from the SNAP.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Fast Stop as a convenience store on July 23, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 21, 2016 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:

- Fast Stop is approximately 1,000 square feet in size and does not have a storage area outside of the public view;
- There were no hand-held baskets or shopping carts available for customer use;
- There was one cash register and one EBT point-of-sale (POS) device;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- Fast Stop has food stock that is typical of a gas station convenience store and it offers customers an extremely small amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Fast Stop does not stock any high priced food items;
- The store owner, El Mustapha Simmad, indicated during the store visit interview that Fast Stop does not extend credit to customers nor does the store offer bulk foods at a discounted rate;
- No signs were posted in the store advertising the availability of bulk foods offered at a discounted rate. Photographs taken during the store visit indicate that the only cases available for sale at a discounted rate were alcoholic beverages;
- The checkout counter has limited space as it is cluttered with miscellaneous items and does not provide a space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- There were no fresh or frozen meats, poultry, or fish items;
- The only meats available for sale were pickled pig's feet, canned/potted meat, canned fish, pickled eggs, and meat jerky;
- Fast Stop had no fresh or frozen fruits and vegetables for sale;
- The only frozen foods stocked at Fast Stop was ice cream;
- Other staple foods available for purchase included items such as 100% juice, cakes/pastries, pasta, canned vegetables, milk, margarine (only two units in stock at the time of the store visit), snack foods, etc.;
- Fast Stop is not a WIC Program vendor and it does not stock any infant foods or formula;
- Fast Stop sold hot prepared, ready-to-eat foods that are intended for immediate consumption for carry-out purposes, and require no additional preparation. These hot foods include chicken tenders, chicken wings, French fries, fried chicken pieces, tamales, sandwiches (hamburgers, cheeseburgers, etc.), etc.;
- Much of the remaining food stock consisted of accessory food items to include such items as candy and gum, carbonated and uncarbonated drinks, pickles, hot sauce, vinegar, corn starch, artificial sweetener, salad dressing, baking soda, tea bags, coffee, non-dairy creamer, etc.; and
- Fast Stop stocked hot foods and other ineligible nonfood items such as tobacco products, household cleaning supplies, alcoholic beverages, pre-paid phone cards, health and beauty aids, paper products, clothing, automotive supplies, hookah pipes, cell phone accessories, knives, gasoline, electronic cigarettes, jewelry, hardware items, charcoal and lighter fluid, pet food, 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 Appellants’ 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 Allegations**

Regarding the Appellants’ contention that they deny 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 Appellants demonstrate by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellants demonstrate by a preponderance of the evidence that trafficking did not occur in the Appellants’ 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.

### **Permanent Disqualification Based on a Computer Generated Analysis**

The Appellants contend that FNS made its decision to permanently disqualify Fast Stop from the SNAP based solely on a computer generated analysis which is insufficient to reasonably establish any clear and repetitive patterns of unusual, irregular, and inexplicable activity for this type of firm. Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents ROD 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, ROD 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 246,000 authorized firms nationwide, ROD 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. **7 USC 2018 (b)(7)(e)**. 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. ROD'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 Appellants' contention that the charges are speculative and based solely upon a computer generated analysis is not compelling.

### **Questionable SNAP Transactions in Charge Letter do not meet the Definition of Trafficking**

The Appellants contend that the allegations of "unusual, irregular, and inexplicable activity" (i.e., multiple transactions made from individual household accounts in unusually short timeframes and excessively large purchase transactions) do not meet the definition of trafficking as cited in the SNAP regulations as neither the Appellants nor any of the store's employees exchanged SNAP benefits for cash. Trafficking is defined, in part, in 7 CFR § 271.2, by the words: "the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food." The Appellants are reading the regulation literally to mean that trafficking requires the buying or selling of actual *physical* items, i.e., coupons, ATP cards or other benefit instruments (i.e., the SNAP benefit cards themselves), and has nothing to do with buying or selling the credits, debits or benefits associated with such instruments.

It must be noted that when the definition of trafficking was originally formulated, the SNAP (originally known as the "Food Stamp Program") utilized paper coupons which were legal tender for the purchase of eligible food items under program rules. There was no separation or distinction between the physical coupon itself and its value. Therefore, there was no reason to distinguish one from the other in the definition. The instrument and its value were simply one and the same. A \$10.00 Food Stamp coupon had a value of

\$10.00, and exchanging such a coupon for cash was the same as exchanging the \$10.00 value of that coupon for cash. The value of the coupon and the coupon itself were inseparable.

The benefit delivery system has since changed. The SNAP is now an electronic benefit system in which benefit holders are issued SNAP benefit cards which are used to debit benefits contained in their electronic accounts. Unlike the old Food Stamp coupons, SNAP benefit cards do not by themselves have any value. What is of value are the benefits contained in the household's electronic account for which the SNAP card is an access instrument. Such benefits may be plentiful or completely depleted. In fact, a SNAP card is not even necessary to transact SNAP benefits, only the card number and PIN. Value in the card can be sold for cash without the physical card being sold with it or the actual card being involved in the transaction.

Although the Appellants may be correct that the charge of trafficking in this case is not consistent with the *literal* meaning of the definition of "trafficking" in 7 CFR § 271.2, which uses words that depict exchanging physical items for cash, this literal translation would not be meaningful if it meant only the exchange of the physical instrument itself void of any value. It is reasonable to assume that Congress' intentions about what trafficking meant did not involve the mere exchange for cash of paper or plastic, but involved rather the exchange for cash of the value such items had associated with and/or inherently in them. People do not traffic for the paper or plastic; they traffic for the benefits, for the value that is inherent in such items or accessible by such items.

### **First Time Violators**

The Appellants contend that this is the first time that they have been cited for any SNAP violations. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **No Warning Provided To Appellants**

Prior to receiving the Charge Letter from FNS, the Appellants contend that they had never been warned that SNAP violations may be occurring at Fast Stop. Per 7 CFR § 278.6(d)(2) and (3) . . . "The FNS office making a disqualification or penalty determination . . . shall consider . . . any prior action . . . to warn the firm about the possibility that violations are occurring, and any other evidence that shows the firm's intent to violate the regulations". The regulatory citation requires FNS to consider any prior warning and evidence of a firm's intent to violate when determining a sanction. It does not require FNS to give such warnings or to prove a firm's intent to violate. FNS did not consider prior actions to warn Fast Stop about the possibility that violations were occurring because there were no prior warnings. The evidence considered by ROD included the raw data of questionable transactions and information obtained during the aforementioned store visit conducted on January 21, 2016.



**Multiple Transactions Made from Individual Benefit Accounts in Short Time  
Frames  
(Charge Letter Attachment 1)**

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

The Chart below lists some of the SNAP households and the number of times they appeared in Attachment 1 of the Charge Letter over the course of the review period. **7 USC 2018 (b)(7)(e).**

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

Below are some examples of the multiple transactions made from individual household accounts in unusually short timeframes that occurred at Fast Stop during the review period:

**7 USC 2018 (b)(7)(e):**

**7 USC 2018 (b)(7)(e)**

**7 USC 2018 (b)(7)(e):**

**7 USC 2018 (b)(7)(e)**

**7 USC 2018 (b)(7)(e):**

**7 USC 2018 (b)(7)(e)**

**7 USC 2018 (b)(7)(e):**

**7 USC 2018 (b)(7)(e)**

The Appellants contend that the multiple transactions made from individual household accounts in unusually short timeframes are the result of: (1) Many SNAP customers having to purchase all of their monthly groceries at Fast Stop because they do not have transportation available to them to reach other authorized SNAP stores; (2) SNAP customers purchasing an item from Fast Stop and then deciding to purchase forgotten items before they leave the store; and (3) SNAP customers asking for food items to be separated so that they can purchase them separately. With regards to the Appellants' contention that the multiple transactions made from individual household accounts in unusually short timeframes are the result of many SNAP customers having to purchase all of their monthly groceries at Fast Stop because they do not have transportation available to them to reach other authorized SNAP stores, this contention is not compelling as there are at least 13 authorized firms located within 2.0 miles or less of Fast Stop, including one super store, one supermarket, one large grocery store, six combination grocery stores, three convenience stores, and 1 fruit/vegetable specialty store. There are plenty of

shopping choices for SNAP recipients other than the subject store. In addition, all of the SNAP households that are listed in the Charge Letter Attachments are shopping at other retail food stores that require transportation to reach them to include those SNAP households that live near Fast Stop. Below is a map of the SNAP households with transactions listed in the Charge Letter. Even for ones that do not live close by, it is unreasonable that they would conduct the transactions listed in the Charge Letter while also shopping at large stores. 7 USC 2018 (b)(7)(e).

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

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

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

7 USC 2018 (b)(7)(e). As one can readily see, these SNAP households are spread out over a wide area indicating that lack of transportation is not as issue for these households. As such, the Appellants' contention that these questionable SNAP transactions are the result of many SNAP customers having to purchase all of their monthly groceries at Fast Stop because they do not have transportation available to them to reach other authorized SNAP stores is unfounded.

The Appellants also contend that the multiple transactions made from individual household accounts in unusually short timeframes are the result of SNAP customers purchasing food items from Fast Stop and then deciding to purchase forgotten items before they leave the store. In such instances, it is reasonable to expect the subsequent purchase to be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. In fact, the contracted Reviewer noted during the store visit that Fast Stop did not stock any high priced food items. However, in many of the Exhibits, the subsequent transaction(s) were for amounts that exceed any nominal, afterthought purchase. In some cases the amounts of the subsequent transactions equaled or exceeded the preceding transaction amount. 7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e):

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

7 USC 2018 (b)(7)(e):

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

7 USC 2018 (b)(7)(e):

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

7 USC 2018 (b)(7)(e):

### 7 USC 2018 (b)(7)(e)

The Appellants also contend that the multiple transactions made from individual household accounts in unusually short timeframes are the result of SNAP customers asking for food items to be separated so that they can purchase them separately. While it is true that on occasion, SNAP customers may ask to have their purchases broken into separate purchases to check that their account balances are sufficient to cover the cost of the entire purchase or so that different family members can pay for different food items on the household's EBT card, the Appellants did not provide any evidence to substantiate that this was true of any of the successive transactions in question. Nevertheless, such explanations do not explain, given the inadequate variety of food stock and the operational makeup of Fast Stop, the large dollar amounts associated either with these successive transactions or with single transactions, or how customers could fit on the store's small check-out counter the large number of food items that would be required to add up to such large totals. It is also important to note that the EBT point-of-sale device/machine is programmed to permit immediate balance inquiries without SNAP customers having to first process a purchase. There is also a toll-free 800 telephone number that can be called by SNAP customers to find out their account balance.

Therefore, it is not necessary for SNAP customers to make a purchase just to find out what they have on balance in their SNAP benefit accounts. 7 USC 2018 (b)(7)(e). It would be unusual for such customers to be concerned about their account balances with so many benefit dollars on hand.

7 USC 2018 (b)(7)(e). An analysis of client shopping patterns in the subject store and other area grocery stores and supermarkets show that access to better stocked stores is not an issue for SNAP households who shop at Fast Stop. 7 USC 2018 (b)(7)(e).

### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

7 USC 2018 (b)(7)(e). These large transaction amounts are not consistent with the store's inventory which contains no fresh or frozen meats and no fresh produce. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. For example, the first four (largest) transactions that are listed in Attachment 2 of the Charge Letter involve the same SNAP household. 7 USC 2018 (b)(7)(e).

### 7 USC 2018 (b)(7)(e)

The Appellants contend that the excessively large purchase transactions are the result of SNAP customers purchasing frozen foods in bulk from Fast Stop such as chicken strips, hot wings, and steak fillets. The Appellants' contention is not compelling. It is important to note that during the store visit interview, the store owner, El Mustapha Simmad, did not indicate to the contracted Reviewer that Fast Stop offers any foods in bulk, including chicken strips, hot wings, and steak fillets. The contracted Reviewer also noted that there

were no signs, flyers, or advertisements in Fast Stop advertising the availability of frozen bulk foods at competitive pricing. The photos taken during the store visit indicated that only alcoholic beverages were available for sale in bulk (case) amounts. In addition, the Reviewer noted that Fast Stop did not have any freezers in which to store bulk frozen foods. In fact, the store visit photos show that Fast Stop only had a small chest freezer located in the store which stocked ice cream only.

The store visit photos also indicated that Fast Stop prepared hot foods for sale to include beef tamales, a variety of chicken, French fries, and sandwiches (hamburgers, cheeseburgers, etc.) (see below photograph). Fast Stop also advertises on a sign in the window that it sells hot foods for breakfast, lunch, and dinner. The Appellants provided vendor receipts/invoices which they indicate are for foods that were purchased for Fast Stop during the review period. However, based on the store visit information obtained, it appears that any cases of beef and chicken products that were purchased for Fast Stop were most assuredly used in the preparation of the hot foods that are offered for sale.



The Appellants provided FNS with 36 receipts/invoices from various food vendors which they state proves that they had purchased frozen bulk foods to be sold at Fast Stop such as chicken strips, hot wings, and steak fillets. The receipts were from the following vendors/companies:

17 Invoices from Sysco (Note: 12 of the 17 invoices were not dated during the nine month review period);

4 Invoices from The H.T. Hackney Company (Note: These 4 invoices do not indicate that any chicken strips, hot wings, or steak fillets were purchased from this vendor); 10 Invoices from Piggly Wiggly (Note: These 10 invoices do not indicate that any bulk chicken strips, hot wings, or steak fillets were purchased from this vendor); and 5 Invoices from DNA Marketing, LLC dba Cash and Carry Wholesale (NOTE: These 5 invoices do not indicate that any bulk chicken strips, hot wings, or steak fillets were purchased from this vendor).

Of the 36 vendor receipts that were provided to FNS, only 5 invoices indicate that any bulk chicken strips, hot wings, or steak fillets were purchased for Fast Stop during the review period. However, based on the fact that Fast Stop sells and advertises these items for sale in a hot/cooked form, that the Appellants provided no evidence to validate that these items are available or advertised for sale in frozen bulk form, and that Fast Stop does not have any freezers available to stock these items in bulk, it is apparent that the bulk chicken strips, hot wings, and steak fillets that were purchased for Fast Stop were most assuredly used in the preparation of the hot foods that are offered for sale.

ROD conducted an analysis of the vendor receipts provided by the Appellants in order to determine whether or not they had purchased enough staple foods to explain the SNAP transactions that occurred at Fast Stop during the nine month review period. Fifteen invoices (out of a total 36 invoices) were rejected for either being dated out of the review period or for being illegible. The valid invoices were dated in the months of April, June, July, September and October (2015) during the review period. However, the absence of invoices means that the Appellants' claim that the excessively large purchase transactions are the result of SNAP customers purchasing frozen foods in bulk from Fast Stop such as chicken strips, hot wings, and steak fillets is not supported nor proven. 7 USC 2018 (b)(7)(e).

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

7 USC 2018 (b)(7)(e). 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 very minimal variety of stock in the store, no fresh or frozen meats, no fresh or frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, including a super store and a large grocery store at which many customers also shopped, 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 Fast Stop 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.

The Retailer Operations Division analyzed the purchasing habits of several SNAP customers who utilized Fast Stop for SNAP purchases during the review period. Below are three examples of SNAP households who not only shopped at Fast Stop during the

review period, but in most instances they made higher purchases at the subject store as compared to stores of comparable, or larger, sizes. These examples indicate that SNAP customers have transportation available to them to reach and shop at other area authorized SNAP stores and do not depend upon Fast Stop for their staple food needs. As a reminder, Fast Stop is a convenience store which offers a very minimal variety of food stock; therefore, there is nothing to indicate any compelling reason for these SNAP households to consider Fast Stop a first choice destination to fulfill larger purchases of foods, especially when there are several other authorized stores located within 2.0 miles of Fast Stop which carry a greater amount and variety of staple foods at comparable, or better prices as compared to the subject store. (Note: In the below tables, CS = Convenience Store; CO = Combination Grocery Store; LG = Large Grocery Store; and SS = Super Store).

#### SNAP Household #1:

This SNAP household regularly conducted transactions in the neighborhood of \$65.00. With a few transactions either less than this amount or more than this amount, the pattern stays fairly consistent throughout the review period as can be seen in the chart below. The entire transaction history follows this chart for reference. Notice that this household regularly shops at super stores and large grocery stores spending several hundreds of dollars in SNAP benefits each month. The notion that a household with that pattern of shopping behavior would find the need to patronize the subject store spending the amounts below is highly questionable. It is more an indication of possible trafficking than it is the sale of eligible staple food items.

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

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

#### SNAP Household #2:

SNAP Household #2 presents a similar pattern. While making nominal purchases at Eagle Fast Stop 2 in April and May, the interesting pattern emerges in June and July after which this household does not shop at the subject store and appears to have moved to southern Mississippi. Notice the transactions on 6/21/2015, 6/23/2015 and 7/11/2015. 7 USC 2018 (b)(7)(e). Notice that this household regularly shops at area super stores and large grocery stores.

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

#### SNAP Household #3:

Below are some excerpted transactions for SNAP Household #3 that also present an interesting pattern. 7 USC 2018 (b)(7)(e). In a store with extremely limited stock and no way to carry items to the checkout counter other than a customer's hands and arms, these transactions are more an indication of possible trafficking than they are of

legitimate purchases of eligible food items.

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

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

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

In August this household conducted its first transactions at a super store on 8/8/2015 and 8/9/2015. 7 USC 2018 (b)(7)(e).

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

In summary, Fast Stop's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. Government analysis 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. Therefore, based on this empirical data, and in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

### **Contacting SNAP Households**

The Appellants contend that if FNS was to contact SNAP households who frequently purchase food items at Fast Stop with their EBT cards, they would indicate that all of their SNAP purchases are legitimate. However, even if FNS were to contact SNAP households who frequently purchase food items at Fast Stop with their EBT cards, the truth of such declarations can neither be confirmed nor denied. Although such declarations/affidavits may be sworn to and/or notarized, that does not mean that they are necessarily truthful. One would not expect a store customer to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer declaration/affidavit provided would attest to questionable transactions being legitimate.

### **Punishment Too Severe for First Time Offenders**

The Appellants contend that even if they had violated the SNAP regulations, a permanent disqualification from the SNAP is too severe of a punishment for first-time offenders. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. The Act, at § 2021, does not allow for discretion in determining sanctions for trafficking and is quite 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.

### **Reversing Imposed Permanent SNAP Disqualification**

The Appellants are requesting that FNS consider reversing its decision to permanently disqualify Fast Stop from the SNAP. 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 February 22, 2016 Determination Letter advised the Appellants of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated February 4, 2016 advised the Appellants 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 Appellants 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 Appellants' 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 Appellants' 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 Eagle Fast Stop #2 is sustained.



## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

February 7, 2017

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

DATE