

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

Eddie's Market #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0199565

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 Program¹ was properly imposed against Eddie's Market #1 (hereinafter "Eddie's Market #1" and/or "Appellant") and its owner of record, by the Retailer Operations Division of the FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a Permanent Disqualification against Eddie's Market #1 in a letter dated July 14, 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.

¹ Section 4001(b) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234; 122 Stat. 1092) amended the Food and Nutrition Act of 2008 by striking "food stamp program" and inserting "supplemental nutrition assistance program" effective October 1, 2008

CASE CHRONOLOGY

In a letter dated May 30, 2017, the Retailer Operations Division informed Appellant that it was being charged with violation of the terms and conditions of the SNAP regulations, 7 CFR §§ 270-282, based on Electronic Benefit Transaction (EBT) SNAP benefit transactions considered to “establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm.”

The Retailer Operations Division record indicates Appellant responded, through counsel, both verbally and in writing and that those responses were duly considered by the Retailer Operations Division. Following that due consideration to the letter of charges, the Retailer Operations Division advised Appellant of a final determination of permanent disqualification from participation in the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1) for trafficking violations, in a letter dated July 14, 2017, documented to have been delivered to Appellant on July 17, 2017.

The determination letter also stated that the Retailer Operations Division considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because the Appellant did not timely submit any evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated July 27, 2017, received in the offices of the Administrative Review Branch on July 31, 2017, Appellant, through counsel, submitted an appeal of the Retailer Operations Division’s assessment, requesting an administrative review of the 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 AND REGULATIONS

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (the “Act”)², 7 U.S.C. § 2021 and promulgated through regulation under Title 7 of the

² Effective October 1, 2008, the Food Stamp Act of 1977 was superseded by the Food and Nutrition Act of 2008, as amended through P.L. 110-246.

Code of Federal Regulations (CFR),³ part 278. In particular CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... a disqualification under subsection (a) shall be ... permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(e)(1)(i) states, *inter alia*:

“FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

7 CFR § 271.2 states, *inter alia*:

*“ **Trafficking** means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits ... for cash or consideration other than eligible food either directly, indirectly, in complicity or collusion with others, or acting alone:...”*

7 CFR § 271.2 states, *inter alia*:

“Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

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

*“FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & 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(c) states, *inter alia*:

“Review of evidence. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination...”

³ Title 7 of the Code of Federal Regulations may be accessed in its entirety via the Internet at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title07/7tab_02.tpl

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

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

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 of the Program.”* [Emphasis added]

SUMMARY OF THE CHARGES

The Retailer Operations Division materials and the charge letter dated May 30, 2017, reveal that charges were based on an analysis of EBT SNAP benefit transaction data during the six (6) month period of October 2016 through March 2017 and involved two (2) patterns of EBT transaction characteristics indicative of trafficking as follow:

- Attachment #1 lists multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes.
- Attachment #2 lists excessively large purchase transactions made from the accounts of SNAP recipients.

APPELLANT’S CONTENTIONS

In the letter dated July 27, 2017 provided viaFedEx, submitted through counsel, Appellant:

- Provided information and documentation showing that research into Census data and SNAP shopping patterns identified that the patterns represented in the letter of charges were plausible when considering the demographics of the city, the census block groups in close proximity to Appellant; and the average SNAP benefits spent per week by SNAP households; [Exhibits A through E]
- Provided nine (9) customer and four (4) notarized employee affidavits for consideration; [Exhibits I & J]
- Provided copies of SNAP materials used to train employees [Exhibit F & K]; on site signage posted at Appellant regarding SNAP [Exhibit G & K]; black and white

photographs of Appellant's operation together with copies of some of the SNAP eligible merchandise, cash register receipts and SNAP transaction receipts [Exhibit H]; and, State tax submission copies; [Exhibit L]

- Indicated that the owner of Eddie's Market #1 would be willing to limit the quantity of and size of their customers EBT transactions if it would please FNS and Appellant could do so while not violating SNAP regulations⁴; and

Provided photographs of signage notifying SNAP customers that they are not allowed to buy hot foods, nonfood items, alcoholic beverages, cigarettes, tobacco, vitamins and other items that are not eligible for SNAP benefits; noting that Appellant otherwise attempts to treat all customers similarly [Exhibits G, J, K].

A second copy of the letter requesting appeal dated July 27, 2017 was received via US Postal Service on August 9, 2017. In electronic mail dated August 17, 2017 Appellant, through counsel, provided a letter dated August 4, 2017 restating the contentions provided to the Retailer Operations Division in reply to the May 30, 2017 letter of charges. This material was provided for further consideration by the Retailer Operations Division and resulted in an amended case sanction recommendation affirming the July 14, 2017 decision as rendered.

Retailer Operations Division found the supplemental materials provided to not be substantively different from the information and materials provided on initial response to the May 30, 2017 letter of charges.

The preceding represents only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

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.

With regards to Appellant's contentions in explanation of questionable transactions, the issue in review is whether there is sufficient evidence, through a preponderance of that evidence, that it is more likely true than not true that the questionable transactions were the result of trafficking.

Appellant Operations:

⁴ Exhibit F is referenced which is a copy of page 7 of the Supplemental Nutrition Assistance Program: Training Guide for Retailers on which respect for SNAP customers is described.

The record reveals that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a store visit conducted by FNS contracted personnel on April 19, 2017. The April 19, 2017 visit was authorized by a self-identified “manager” and resulted in materials reflecting observations made during the store visit which describe the nature and scope of Appellant’s operation, as well as the stock and facilities.

Appellant is reported to be open seven (7) days per week from 6:30AM until 10:00PM on Monday through Friday; from 7:00AM until 7:00PM on Saturday; and, from 8:00AM until 9:00PM on Sunday; reported by store personnel to be operating out of a commercial space of approximately 1000 square feet. The material indicates that Appellant operation includes one (1) center aisle stocked on both sides; ice cream, non-food and the ATM against one (1) wall; cold beverages, juice, milk & eggs against the back wall; a checkout area adjacent to microwave, hot food and cold sandwich bar; a deli case with fresh produce and deli meats sold by weight together with pre-packaged deli meats; and a pastry/coffee bar immediately left of the front entrance.

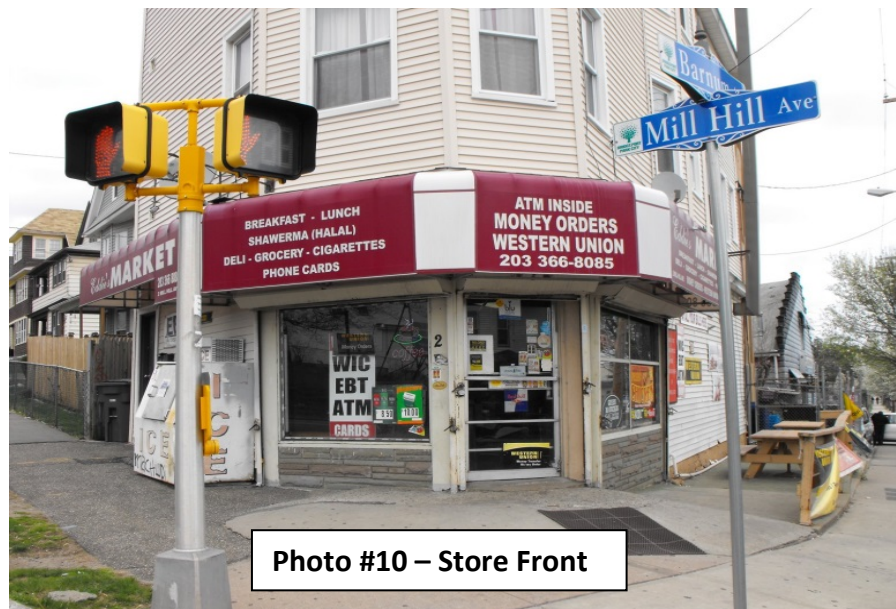
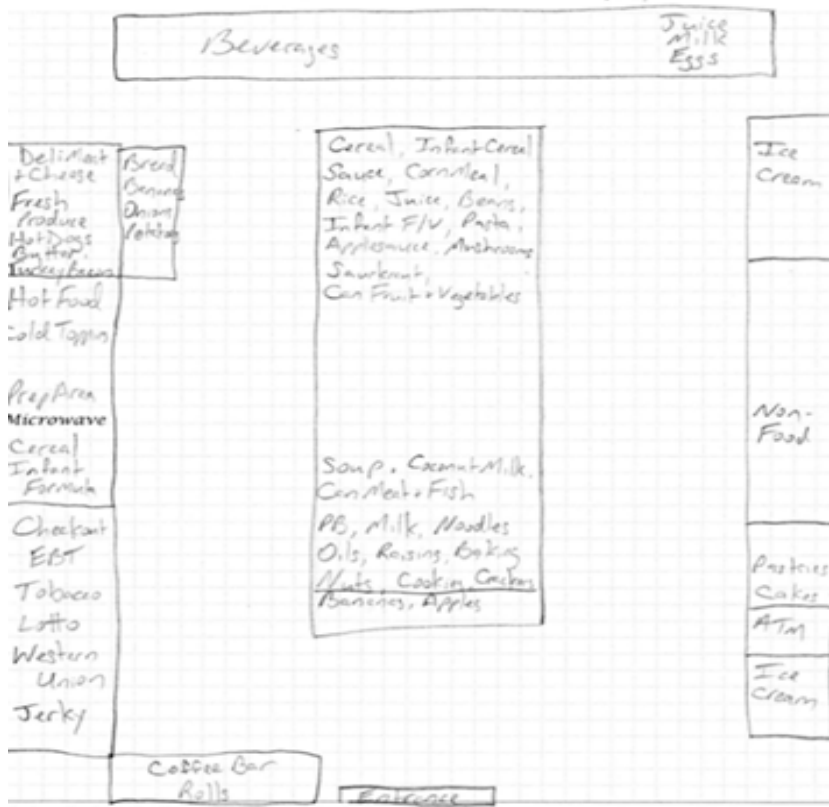


Photo #10 – Store Front

Store Visit Layout Sketch

Store Name Eddie's MarketDate 11/17/17

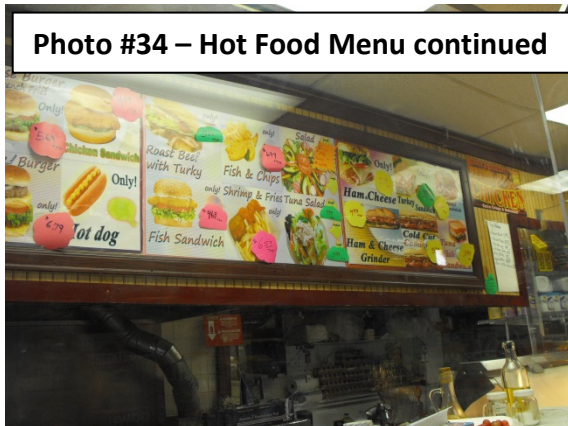
The store layout should reflect the general store layout and include all major categories, such as refrigerated and dry storage areas, storage racks, storage bins, etc. Storage areas should be labeled with specific items for categories listed on survey form. Storage areas where frozen items are stored should also be shown on the sketch. Handwriting must be clear, legible (black printing is preferred) and dark enough to appear in photographs.

No out of public view storage was declared or identified in either the store visit certified photographs or the sketch of the store layout.

The store visit materials describe Eddie's Market #1 as a convenience store; operating with one (1) general use cash register that is not equipped with scanning technology; and, one (1) point-of-sale (POS) terminal. A specialty cash register is reported to be used for lottery sales and Western Union funds transfers. The checkout operation is seen in the certified store visit photographs to be enclosed in a Plexiglas area; with the space for placement of products presented for purchase further hampered by merchandise displays on the checkout counter.



The sale of SNAP ineligible prepared ready-to-eat foods is prominently advertised with a hot food display counter adjacent to the cold deli area.





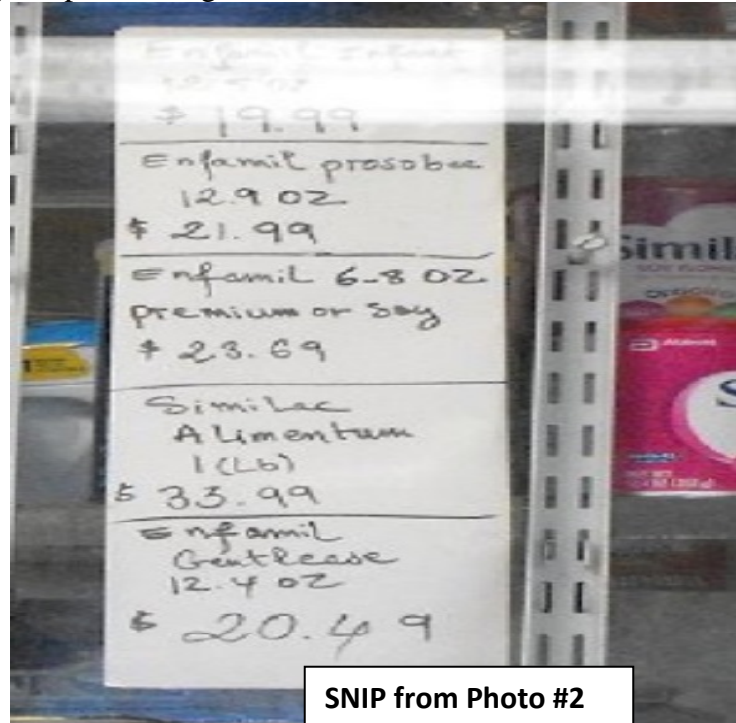
The store visit materials document that there are no hand-held shopping baskets or shopping carts available to support the delivery of purchases to the counter/checkout area for the completion of merchandise price totaling and payment. There is no identifiable area for staging and packaging items presented for purchase.

Posted signage advertises that Appellant accepts/redeems both SNAP and WIC (Special Supplemental Nutrition Program for Women, Infants, and Children) benefits; however, the official FNS record does not report any WIC redemptions for Appellant since SNAP authorization in September 2016. Further research reveals that Appellant was SNAP authorized in September 2016; following reapplication upon the death of his father, who had been SNAP authorized at the same location from June 30, 1998 through August 29, 2016. Contact with the Connecticut WIC State Agency revealed that Appellant's ownership had continued to redeem WIC benefits using the initial WIC contract established by the initial owner (father). That WIC contract is reported to have expired on September 30, 2017 and the WIC license has not been renewed due to Appellant's failure to attend mandatory retailer training.

The inventory at the time of the April 19, 2017 store visit includes varieties in each of the four (4) staple food groups as follows:

- Five (5) varieties of dairy products with more than 20 units identified in butter/margarine; cheese, ice cream/ice milk; milk/cream; and infant formula. The infant

formula is notably displayed behind the Plexiglas barrier and is available in five (5) types as evidenced by the price listing seen below.



- Seventeen (17) varieties of fruits and vegetables with the majority (nine (9)) in units of 20 or more.
- Nine (9) varieties of breads and cereals were identified with eight (8) of those available in units of 20 or more.
- Six (6) varieties of meat/poultry/fish staple foods. The materials identify three (3) units of fresh/frozen/refrigerated chicken; four (4) units of eggs; more than 20 units of canned fish and jerky; and more than 20 units of deli meats and canned meats.

The store visit materials indicate that the most expensive SNAP eligible items sold @ Appellant include Similac formula @ \$33.99 (note from the SNIP above that other formula is also priced from \$19.99 to \$23.69); turkey ham sold @ \$7.59 per pound; cheese sold @ \$7.49 per pound; and olive oil @ \$7.99 for the 17 ounce bottle.

Non-SNAP products and services offered at Appellant include tobacco products, lottery tickets, health and beauty aids, paper goods, cleaning products; and the aforementioned ATM and Western Union money transfer service.

Charge Letter Attachment Analysis:

The data reflected in the letter of charges dated May 30, 2017 is the result of information gained primarily from the Anti-Fraud Locator using Electronic Benefits Transfer (EBT) Retailer

Transactions (ALERT) system which is a fraud detection, decision support system designed to monitor and track electronically conducted retail transactions completed by SNAP recipients in authorized meal program and food retailer locations.

The ALERT System facilitates management of the program by providing transaction-level information to Federal personnel charged with the responsibility of SNAP retailer management and compliance. The system uses pre-defined criteria or patterns for potential fraud detection. Pre-formatted reports provide information on those stores and transactions meeting the criteria. ALERT supports both online analysis and online queries and reports for use by FNS. The system does not make the final determination instead it is used by Retailer Operations Division to develop information and evidence for consideration in support of their development of an ultimate decision.

Attachment #1: Represents **multiple SNAP EBT transactions made from individual benefit accounts in unusually short timeframes** and includes 46 transactions; grouped in 20 sets; where 11 households redeemed SNAP benefits in sets of two (2) to three (3) transactions; in time spans of between approximately two (2) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division documents that completing multiple transactions w/ 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is a method used by some stores to avoid high dollar transactions that cannot be supported and are indicative of trafficking; the materials in review did not evidence any reason why SNAP customers would consider Appellant as its first choice food destination for large orders or multiple purchases.

On review it is noted that there were two (2) of the 11 households that had multiple transactions in three (3) months of the focus period; and, five (5) of the households completed transactions in two (2) of the months.

Retailer Operations Division documents that the households with repeated same day transactions also conducted SNAP transactions at other larger, better stocked, SNAP authorized firms either preceding or following the multiple transactions at Appellant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations Division determined that given Appellant's operational information it is not reasonable that households could bring to the counter quantities of SNAP eligible foods, in the amounts identified in the Attachment #1 materials, from the inventory identified at the store visit.

Attachment #2: Represents **excessively large purchase transactions made from the accounts of SNAP recipients** with 324 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Retailer Operations Division indicates that the average convenience store transaction in the State of Connecticut in the focus period was \$8.70; and in the County of Fairfield the average transaction was \$9.13 during the focus period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally it is noted that Appellant customers purchased large quantities of expensive items such as soft drinks, cold cuts, baby formula, milk and honey.

As evidence of this explanation Appellant provided customer affidavits [Exhibit I] together with black and white photographs⁵ of:

- Lactose free and soy milk priced on shelf @ \$5.69 and \$2.99;
- approximately 11 bottles of Black Seed Honey Booster Herbal Honey Blend tonic with a nutrition label priced @ \$17.99;
- a price listing for infant formula similar to that shown above (SNIP from Photo #2);
- the front window of the deli display showing prices for turkey breast, and salami @ \$6.99 per pound; pastrami @ \$5.77 per pound; and bacon @ \$3.79 per pound;
- wild Alaskan Salmon Burgers with no price indicated and no indication where in firm the product was stored;
- three (3) presumed customers with products stacked in checkout window; and
- five (5) pages of copies of Retailer Copies of Food Stamp Purchase Receipts, two (2) marked “camera” and cash register receipts for varying amounts.

No correlation to either of the charge letter attachments could be drawn from full review of dates and amounts on any of the materials provided; and, the “tonic” could not be identified in the store visit official photographs.

Customer Affidavits:

Both in reply to the letter of charges and in the request for administrative review Appellant provided nine (9) affidavits⁶ from reported customers, together with identification for each affidavit provided, stating that the signatory made frequent purchases for food items using SNAP benefits, providing the last four (4) numbers on their SNAP benefit account.

Retailer Operations Division documented having conducted a comparison of the affidavits with the SNAP EBT accounts used to conduct the transactions listed in the charge letter attachments finding:

- The prices listed by the affiants in six (6) of the nine (9) affidavits were characterized as 5 U.S.C. § 552 (b)(6) & (b)(7)(C)... which is not consistent with the pricing structure identified in the store visit materials;
- The materials to be anecdotal because they do not include evidence of any SNAP purchases as described;
- Comparison of the identified suspicious transactions from the charge letter Attachments 1 and 2 to the affidavits revealed potential matches for six (6) of the nine (9) affidavits. Three (3) of the affidavits were not identified to have had the card numbers with the last four (4) digits identified recording any of the suspicious transactions.

⁵ Exhibit H – copies of receipts, merchandise and customer photographs

⁶ Exhibit I – Customer Affidavits

Retailer Operations Division documents that the transactions are suspicious in consideration of the operation and facilities of Appellant. As previously indicated the store visit materials, completed in cooperation with the manager authorizing the April 19, 2017 visit, revealed that the most expensive SNAP eligible items sold @ Appellant include Similac formula @ \$33.99 (note from the SNIP above that other formula is also priced from \$19.99 to \$23.69); turkey ham sold @ \$7.59 per pound; cheese sold @ \$7.49 per pound; and olive oil @ \$7.99 for the 17 ounce bottle.

As indicated above Appellant ownership had continued to redeem WIC benefits using the initial WIC contract established by the initial owner (father) and it is unusual and unreasonable for SNAP/WIC participants to use their SNAP benefits for the purchase of infant formula which is a primary benefit of participation in WIC.

Comparison/Competitor Store Information:

Retailer Operations Division documents that the subject firm is located within a one-mile radius of 10 larger SNAP authorized stores including two (2) superstores, two (2) medium grocery stores; and, six (6) small grocery stores; together with 35 alternative convenience stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C):

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E).

Household Analysis:

A review of the store visit materials revealed no SNAP eligible inventory available at Appellant that was not also available at competitor convenience stores and the larger stores in the area.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

An analysis was completed of the SNAP transactions of four (4) households identified in the attachment materials to the letter of charges. The analysis reveals that each of the households analyzed conducted numerous suspicious transactions at Appellant, clearly distinct from the patterns for the same households at alternative shopping venues.

For example:

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of the shopping pattern for this household revealed SNAP transactions conducted at supermarkets and superstores sometimes the day before, the same day, and the day after the transactions at Appellant. Table II below provides a breakdown of the transactions referenced.

5 U.S.C. § 552 (b)(7)(E)

- 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E)

Location/Demographics:

In reply to the May 30, 2017 letter of charges, and in the materials provided for administrative review, Appellant, through counsel, provided materials developed in research of the City of Bridgeport and the two (2) closest census block groups. These materials are reported to serve to support the contention that the patterns represented in the letter of charges were plausible when considering the demographics of the city and the census block groups in close proximity to Appellant. 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

Appellant also indicated that a significant portion of the households in Bridgeport, Connecticut were reported not to own a vehicle in 2012⁷; resulting in SNAP authorized firms such as Appellant, attracting a sizeable amount of business from the adjacent residential neighborhoods, accounting for the anomalous transaction patterns reported in the May 30, 2017 letter of charges.

5 U.S.C. § 552 (b)(7)(E). However, it is not stated whether this close proximity to the hospital attracts hospital employees, hospital visitors or both.

Retailer Operations acknowledges the proximity of Appellant to the hospital as sited however the information identify any specific reasons why either group would choose to use Appellant as the source for SNAP purchases given the superior SNAP competitors identified in the immediate surrounding area.

State Sales Tax Information:

Appellant provided Connecticut Sales Tax and Payment Summaries⁸ for the focus months. The documents for each month include as item 21 “Food for human consumption, food sold in vending machines, and items purchased with food stamps” as a deduction. Comparing the reported food sales information with the official agency record of SNAP redemptions shows results as displayed in Table IV below:

5 U.S.C. § 552 (b)(7)(E)

⁷ Exhibit C – Source listed by Appellant as CLRChoice, Inc.

⁸ Exhibit L – CT sales and use Tax Returns for periods ending 10/31/16 through 3/31/17

Because the amount of SNAP sales is only a portion of the total amount of revenue subject to exemption from sales tax in the State of Connecticut the materials as provided do not demonstrate a justification to modify or reverse the decision of the Retailer Operations Division.

Offer to Modify Operation:

Appellant, through counsel has indicated a willingness to limit the quantity of and size of their customers EBT transactions if it would please FNS and Appellant could do so while not violating SNAP regulations. On review it is noted that the SNAP regulations, as evidenced in training materials provided on initial authorization for SNAP in September 2016, specifically prohibit restrictions on the amounts and frequency of SNAP transactions by authorized retailers.

Denial of Charges:

Appellant provides that it has not knowingly committed an act of trafficking as evidenced by the customer affidavits provided in Attachment I; and, that if an act of trafficking did occur at Appellant ownership did not know about it, approve of it, benefit from it or was in any way involved in it.

As indicated previously the customer affidavits referenced by Appellant do not affirmatively prove that no SNAP trafficking has occurred. The materials merely evidence that nine (9) customers provided unsworn affidavits indicating that they had not intentionally committed any acts of trafficking. Similarly, self-declaration by Appellant ownership of being unaware of SNAP trafficking, approving it or benefiting from it are not evidence of the statements provided.

Appellant also provided four (4) notarized employee affidavits⁹ for consideration affirming employment at Appellant; attesting to being provided training prior to working at Appellant and at no time committing any fraud or food stamp trafficking or intentionally abusing the SNAP program knowingly. Albeit the declarations are notarized there is no correlating materials affirming whether or not these four (4) employees were the ones conducting SNAP transactions at Appellant during the focus period.

Therefore, the evidence as provided does not support the mitigation or reversal of the current charges in review.

Civil Money Penalty

Part 278.6(f)(1) 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 assessments thereunder: “A

⁹ Exhibit J – Four (4) notarized employee affidavits

civil money penalty for hardship to Food Stamp households may not be imposed in lieu of a permanent disqualification.” Therefore, this civil money penalty provision is not applicable in the present case.

As previously indicated the July 14, 2017 determination letter advised Appellant 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 May 30, 2017 advised Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The record documents that no request for a civil money penalty in lieu of disqualification was made by Appellant, either verbally or in writing. Additionally no materials were provided for consideration that Appellant met the four criteria qualifying for the alternative sanction.

Appellant did not provide:

- Written and dated documentation that showed a commitment to ensuring that the firm was operated in a manner consistent with SNAP regulations;
- Documentation of the development of a policy to terminate violating employees;
- No documentation of the development of procedures for internal review of employee compliance with SNAP regulations; and,
- No documentation of procedures or policy addressing corrective action if violations were identified.

Therefore, on review the Retailer Operations Division’s determination that Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division analysis of Appellant’s EBT transaction records, upon which charges of violations are based, together with observations made during the contracted store visit provide substantial evidence that questionable transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to SNAP customers at a store of the nature and scope as described in the preceding materials. Rather, the characteristics are indicative of illegal trafficking in program benefits.

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 and that the Retailer Operations Division has provided substantial evidence of trafficking violations.

Based on the discussion above, the decision to impose a permanent disqualification from participation in the SNAP against Eddie’s Market #1 is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

NANCY BACA-STEPAN
Administrative Review Officer

November 28, 2017