

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

Elizabeth Grocery,

Appellant,

v.

Case Number: C0197803

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 Elizabeth Grocery by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP when it imposed a Permanent Disqualification against Elizabeth Grocery on May 8, 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 March 29, 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 letter received by the Retailer Operations Division on April 10, 2017, the Appellant provided various vendor invoices for foods purchased for Elizabeth Grocery as an explanation for the questionable SNAP transactions that were outlined in the March 29, 2017 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 8, 2017, informing the Appellant that Elizabeth Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked May 15, 2017, the Appellant 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 May 18, 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. **5 U.S.C. § 552 (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, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

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

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

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

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

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

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

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

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

- There were an unusual number of transactions that ended in a same cents value;
- There were multiple transactions made too rapidly to be credible;
- There were multiple transactions made from individual benefit accounts in unusually short timeframes;
- There were transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

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

In the Appellant's reply to the Charge Letter, in the review request postmarked May 15, 2017, in a subsequent correspondence postmarked May 23, 2017, and in subsequent e:mail messages dated June 20, 2017 and October 11, 2017, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Elizabeth Grocery;
- The unusual number of transactions that ended in a same cents value are the result of: (1) The Appellant rounding down even-dollar transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**; and (2) Many of the food items stocked at Elizabeth Grocery being priced **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**;
- The multiple transactions made too rapidly to be credible are the result of SNAP customers making an order for food items over the telephone to the Appellant so that the groceries are ready and the total transaction is added up when the customer comes into the store to pick up the ordered food items;
- The multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers making a second purchase for forgotten food items after an initial food purchase has already been rung-up on the store's cash register;
- The transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes are the result of SNAP customers purchasing a large variety of Hispanic food items at Elizabeth Grocery that are not available at other area grocery stores;
- The excessively large purchase transactions are the result of SNAP customers purchasing large amounts of expensive food items such as Hispanic groceries, foods from the deli counter, marinated meats such as beef, pork, chicken, pork chops, etc.; and

- A permanent SNAP disqualification will impose a financial hardship on Elizabeth Grocery as a large percentage of the store's sales are from SNAP customers.

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

- 157 Vendor Invoices for food purchases made for Elizabeth Grocery;
- 24 Color photos of some of the food items stocked at Elizabeth Grocery;
- 23 Cash register receipts belonging to SNAP customers who purchased items from Elizabeth Grocery in March and April 2017; and
- A hand-written list of some of the food items available for sale at Elizabeth Grocery with food prices.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Elizabeth Grocery as a small grocery store on June 1, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 7, 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:

- Elizabeth Grocery is approximately 1,350 square feet in size and it does not have a storage area outside of the public view;
- Elizabeth Grocery is located in a suburban, residential area of Chicopee, Massachusetts;
- The space within the store aisles is narrow;
- Some of the store shelves were empty or scantily filled;
- There were no shopping carts and less than 10 hand-held baskets available for customer use;
- Elizabeth Grocery 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;
- Elizabeth Grocery has a food stock that is typical of small grocery stores and it offers customers a moderate variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Elizabeth Grocery is not a WIC Program vendor and it does not sell any infant foods or infant formula;
- The most expensive food items offered for sale at Elizabeth Grocery appear to be pork shoulder, frozen beef, frozen chicken, and frozen shrimp;
- It does not appear from the store visit observations that Elizabeth Grocery extends credit to customers;

- No signs were posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include grocery package deals;
- The checkout counter has a limited space as it has a Plexiglas barrier surrounding it. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Elizabeth Grocery stocked only two varieties of fresh meats in limited quantities to include (packaged) fish fillets and pork shoulder;
- Elizabeth Grocery stocked a small amount and variety of frozen meats, poultry, and seafood items to include beef, chicken, fish fillets, and shrimp;
- Elizabeth Grocery has a deli case/section in which deli meats and cheeses are sold by the pound. The deli meats and cheeses stocked in the deli case/section are also used in the preparation of made-to-order sandwiches. However, there were no signs or menu boards posted in the store which advertised the prices of these food items;
- Elizabeth Grocery had a small kitchen/food preparation area in which hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation were prepared for sale to customers. However, there were no signs or menu boards posted in the store which advertise these types of foods available for purchase or their prices;
- Other meat items available for sale included canned fish, canned/potted meat, pork sausage, and eggs;
- Elizabeth Grocery stocked a moderate variety and amount of fresh produce items to include tomatoes, lettuce, green peppers, avocados, white potatoes, yams, onions, bananas, plantains, oranges, etc. It is important to note that some of the produce items stocked at Elizabeth Grocery were used in the preparation of or as an accompaniment to the in-store prepared hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation;
- Elizabeth Grocery did not stock any frozen fruits; however, the store stocked a limited amount and variety of frozen vegetables to include green peas, mixed vegetables, and French fries;
- Other staple foods available for purchase included such items as 100% juice, a limited variety of canned fruits and vegetables, pasta, rice, bread, cereal, flour, corn meal, milk, margarine, ice cream, snack foods, cakes/pastries, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, coffee, vegetable oil, and spices; and
- Elizabeth Grocery stocked a good supply of hot foods and ineligible nonfood items such as health and beauty items, tobacco products, candles, paper products, household cleaning supplies, infant diapers, laundry detergent, kitchen pots/pans, pet food, automotive supplies, 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.

Denial of Trafficking Allegations

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

Same Cents Transactions (Charge Letter Attachment 1)

This Attachment lists 131 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant contends that the unusual number of transactions that ended in a same cents value are the result of: (1) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. In addition, the Appellant provided FNS with a total of 23 customer receipts, dated in March and April 2017, in order to show that legitimate food purchases were made with SNAP benefits at Elizabeth Grocery. However, none of the 23 customer receipts indicated that the total of the purchase made with SNAP benefits ended **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As such, the Appellant’s contention is unsubstantiated.

The Appellant’s unsubstantiated statements are not supported by available evidence. For example, there are no signs in the store advising its customers of such a pricing policy. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Typical retail food stores operate on relatively low profit

margins and it is unlikely that a store would be rounding down its prices. Likewise, it is unlikely that store clerks would have the authority to choose when to round down amounts or to charge based on the price labels. This method of pricing would be seemingly arbitrary to store customers and would likely lead to more conflicts within the store and not less.

Regarding the Appellant's contention that the unusual number of transactions ending in a same cents value are the result of many of the food items stocked at Elizabeth Grocery being priced at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), it is important to note that some of the foods stocked at the subject store did not have prices listed on them. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Due to Elizabeth Grocery's mostly low cost foods, the larger dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in a total purchase price ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead, when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more dispersed statistical spread of ending cent 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transaction purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions Made Too Rapidly to be Credible (Charge Letter Attachment 2)

This Attachment lists 38 sets of transactions (76 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits that met the parameter of this Scan.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant contends that the multiple transactions made too rapidly to be credible are the result of SNAP customers making an order for food items over the telephone to the Appellant so that the groceries are ready and the total transaction is added up when the customer comes into the store to pick up the ordered food items. However, the Appellant's unsubstantiated statement is not supported by available evidence. For example, there are no signs or flyers in the store advising its customers that Elizabeth Groceries takes pre-orders for foods over the telephone and that the customer's groceries are ready and totaled up when he/she comes to the store.

Frequent and large transactions conducted rapidly in order to purchase eligible foods at Elizabeth Grocery are highly unlikely given the store's logistical wherewithal and store stock. The firm does not maintain the logistical wherewithal required to rapidly process these transactions. In light of the above, consider the time required to process a legitimate purchase and the steps involved:

1. Unloading items onto the checkout counter (less than 10 hand-held baskets and no shopping carts are available to customers of Elizabeth Grocery);
2. Separating eligible items and ineligible items;

3. Handling by the cashier of individual items to determine the price, which in this case involved manual keying of amounts;
4. Entering the prices into a cash register, once for eligible foods and once for ineligible items;
5. Bagging the items for carry out;
6. Handing the customer bagged items to make room for more food items the customer is bringing to the counter;
7. Informing the customer of the total;
8. Pressing the “SNAP transaction key” on the point-of-sale device;
9. Swiping the card;
10. Entering by the customer of the required PIN;
11. Cashier entry of the purchase amount;
12. Confirming customer has a sufficient benefit balance;
13. Processing and approval of the transaction by the system;
14. Printing out register and EBT receipts;
15. Accepting an alternate form of payment for nonfood items and possibly handling cash change; and
16. Removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may well be done in succession, one will readily surmise that performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between the transactions. Limited counter space as well as manually key-entering 19-digit card numbers adds additional time to transactions. Elizabeth Grocery processed orders (i.e., a set of transactions conducted by two individual SNAP customers) at rates **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, yet the firm had only a small checkout counter, no optical scanner and none of the logistical tools such as conveyor belts, rotating bagging platforms or order separators that are routinely used in rapid throughput operations. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Elizabeth Grocery are highly unlikely given the store’s logistical wherewithal and store stock. Lastly, large transactions for the purchase of legitimate food items using no shopping carts and very little checkout counter space, processed rapidly is implausible. The Appellant’s rationale regarding how it may conduct such transactions rapidly is not compelling.

Multiple Transactions Made from Individual Benefit Accounts in Unusually Short Timeframes (Charge Letter Attachment 3):

This Attachment documents 95 sets of transactions (202 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. 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.

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers making a second purchase for forgotten food items after an initial food purchase has already been rung-up on the store’s cash

register. However, the Appellant's unsubstantiated statement is not supported by available evidence. For example, there are many transaction sets listed in Attachment 3 of the Charge Letter in which the second and/or the third transaction is larger than the initial transaction. Therefore, it is highly unlikely that the second and/or third transaction is for the purchase of a "forgotten item" as is indicated by the Appellant.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristic 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. Elizabeth Grocery is not set up to provide for all of one's food needs with a small amount and variety of fresh and frozen meats, no frozen fruits and only a small amount and variety of frozen vegetables, a moderate variety of fresh produce items, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store. It is irregular for small grocery stores to have purchases such as those cited, especially when Elizabeth Grocery 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.

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

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 44 SNAP authorized retailers located within a 2.0 mile radius of Elizabeth Grocery that can meet the nutritional needs of SNAP customers. As mentioned above, SNAP customers that shopped at Elizabeth Grocery during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Elizabeth Grocery's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

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

Transactions in Which the Majority or All of an Individual Recipient Benefits were Exhausted in Unusually Short Timeframes (Charge Letter Attachment 4)

This Attachment documents 85 suspicious transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by 41 different households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

The Appellant contends that the transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes are the result of SNAP customers purchasing a large variety of Hispanic food items at Elizabeth Grocery that are not available at other area grocery stores. However, the Appellant's statement is unsupported by available evidence. A review of the FNS store visit photos indicates that Elizabeth Grocery does not offer a substantial amount and variety of Hispanic foods that are not available at other area grocery stores. While the store visit photos indicate that Elizabeth Grocery stocks a few varieties of canned vegetables made by the company "Goya®", this brand of canned vegetables is widely offered at other retail stores. A review of the store visit photos also indicates that Elizabeth Grocery may offer a few seasoned (with "special spices") pork shoulders, this small amount of fresh meat would not account for the violative SNAP transactions that are listed in Attachment 4 of the Charge Letter.

A government report on SNAP household patterns indicates that after the first day of benefit issuance, on average 80 percent of a household's allotment remains unspent. After seven days, 40 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a moderately stocked small grocery store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same. In addition, there are 44 stores located within a 2.0 mile radius of Elizabeth Grocery that are authorized to participate in the SNAP where SNAP households can and do shop. However, these other authorized SNAP stores do not display EBT transaction patterns similar to those displayed by the subject store.

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

Excessively Large Purchase Transactions (Charge Letter Attachment 5)

This Attachment lists 815 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, there is no indication from the store visit report that Elizabeth Grocery would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of SNAP customers purchasing large amounts of expensive food items such as Hispanic groceries, foods from the deli counter, marinated meats such as beef, pork, chicken, pork chops, etc. However, the Appellant's contentions are not supported by available evidence. A review of the FNS store visit photos indicates that Elizabeth Grocery stocks a minimal amount and variety of Hispanic groceries and deli meats. In addition, the store visit photos indicate that Elizabeth Grocery stocks a moderate amount and variety of fresh and frozen meats, poultry, and seafood items. There were no signs posted anywhere in the store to indicate the prices of the fresh and frozen meats that were for sale. The hand-written list that the Appellant provided to FNS listed some of the food items (including meats) that are for sale at Elizabeth Grocery and their prices. However, this list was not posted in the store nor was it available at the time of the FNS store visit.

While the Appellant provided FNS with 24 color photos of some of the food items that are stocked at Elizabeth Grocery, including large amounts of fresh and frozen meats, poultry, and seafood items, it is apparent from the FNS store visit observations that the Appellant had stocked the store with a large amount of these food items in order to substantiate his claim that the store sells a large amount and variety of groceries including fresh and frozen meats. The Appellant also provided FNS with 23 cash register receipts that included some of the SNAP transactions that had occurred in March and April 2017. However, the cash register receipts only listed the total amount of each SNAP transaction and did not list the individual food items that were purchased with SNAP benefits. In addition, the cash register receipts were dated outside of the review period; therefore, they cannot be considered as part of the Appellant's explanation for the excessively large purchase transactions that were listed in Attachment 5 of the Charge Letter.

The FNS store visit report and photos show that Elizabeth Grocery offers a moderate stock of SNAP eligible foods with a small amount and variety of fresh and frozen meats, poultry, or seafood, no frozen fruits and only a small amount and variety of frozen vegetables, and a moderate variety of fresh produce items. The inventory report and photos also show that Elizabeth Grocery stocks only a few expensive eligible foods 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 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 44 SNAP authorized retailers located within a 2.0 mile radius of Elizabeth Grocery. Several of the SNAP authorized stores are larger than the subject store 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 Elizabeth Grocery have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located nearby and at several miles distance from the Appellant's location. While Elizabeth Grocery does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to 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 Retailer Operations Division compared the SNAP volume, the average transaction amount, and total purchase transaction count of Elizabeth Grocery during the review period to that of other small grocery stores in Massachusetts during the same time period.

5 U.S.C. § 552 (b)(7)(E).

The Appellant provided FNS with a total of 157 vendor invoices in order to substantiate that Elizabeth Grocery purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the six month review period. However, after a thorough review of the vendor invoices by the Retailer Operations Division, it was determined that only 114 of the invoices were within the review period and could be included in the invoice analysis. As is indicated in the below chart, there were 33 invoices outside of the six month review period, 3 invoices that had no dates listed, 1 payment receipt, 1 incomplete invoice, 2 invoices with no retailer's name, and 3 invoices that belonged to different retailers (i.e., the invoices were not for purchases that were made for Elizabeth Grocery).

List of Invoices:

5 U.S.C. § 552 (b)(7)(E)

As indicated below, two invoices did not include a supplier's name and included purchased items that were not readable:

5 U.S.C. § 552 (b)(7)(E)

As is indicated below, 3 Invoices Belonged to Other Retailers:

5 U.S.C. § 552 (b)(7)(E)

The Appellant did not provide FNS with a convincing rationale to justify the review period redemptions nor did he address his cash and credit sales and Elizabeth Grocery's mark-up percentage. Therefore, in the absence of any specific percentage of cash and credit sales, the Retailer Operations Division allocated a standard 20% cash and credit sales in the invoice analysis. To give the Appellant favorable consideration, the Retailer Operations Division also assumed a 40% mark-up on the store inventory. After a thorough review and analysis of all of

the review period invoices, FNS determined that the analysis shows a significant variation between the store inventory and store's SNAP redemptions. As such, the invoices provided by the Appellant do not justify or substantiate the SNAP redemptions that were conducted at Elizabeth Grocery during the six month review period.

5 U.S.C. § 552 (b)(7)(E)

**Please note that Elizabeth Grocery was not a WIC Program vendor during the review period.

5 U.S.C. § 552 (b)(7)(E)

As is indicated below, a review of the invoice analysis also indicates that a unique form of payment for store merchandise was utilized by Elizabeth Grocery during the review period. FNS found a total of three invoices which indicate that the Appellant had made some inventory purchases with EBT cards. In the absence of any comments/remarks from the Appellant regarding the use of these EBT cards in making store inventory purchases, it is likely that the Appellant purchased these cards from SNAP recipients and utilized the EBT cards to purchase store inventory.

As is indicated below, Elizabeth Grocery utilized EBT cards to purchase store merchandise:

5 U.S.C. § 552 (b)(7)(E)

It is important to note that even if the vendor invoices provided by the Appellant did show that Elizabeth Grocery 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 even dollar transactions, transactions made too rapidly to be credible, transactions in which the majority or all of individual benefits were exhausted in short timeframes, and rapid and 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 moderate variety of stock in the store, a small amount and variety of fresh and frozen meats, no frozen fruits and only a small amount and variety of frozen vegetables, and a moderate variety of fresh produce items, a greater variety of foods at comparable or lower prices at other stores, no shopping carts and less than 10 hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Elizabeth Grocery to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a small grocery store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at Elizabeth Grocery compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation

available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Elizabeth Grocery often **5 U.S.C. § 552 (b)(7)(E)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery store with moderate staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/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 5 are more likely than not the result of trafficking in SNAP benefits.

Disqualification Imposes Financial Hardship on Store

The Appellant contends that a permanent SNAP disqualification will impose a financial hardship on Elizabeth Grocery as a large percentage of the store's sales are from SNAP customers. **5 U.S.C. § 552 (b)(7)(E)**. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

As previously indicated, the May 8, 2017 Determination Letter advised the 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 March 29, 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 Elizabeth Grocery is sustained.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act, 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

November 27, 2017