

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

**Empire Market,**

**Appellant,**

**v.**

**Case Number: C0200939**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against the Empire Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on September 28, 2017.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 August 31, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the

months of November 2016 through April 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant requested an extension of time to respond and was approved for an extension until September 20, 2017. Appellant responded to the charges in a letter dated September 14, 2017; however, the response did not request or provide evidence in support of a trafficking CMP in lieu of a permanent disqualification. The Retailer Operations Division notified Appellant in a letter dated September 28, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated October 4, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence dated November 4, 2017, was received from Appellant.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

## **CONTROLLING LAW**

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

In addition, 7 CFR § 278.6(a) states, in part, “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) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2. ” Trafficking is defined, in part, in 7 CFR § 271.2, as, “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 . . . .” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR §278.6(i) states, inter alia: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking . . . 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.”

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).” Part 278.6(b)(2)(ii) further states that 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 Part 278.6(b)(1), the firm shall not be eligible for such a penalty.

## SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of November 2016 through April 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

## APPELLANT'S CONTENTIONS

In the response to the letter of charges, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The owner received an MBA from a local university and opened a 2,500 SF store in downtown Providence in 2014 after having studied the location. She and her husband worked 16 hours a days, seven days a week to build a good clientele and a good relationship with local customers the majority of whom are low income SNAP recipients that rely on food stamps to supplement their food budget. Most of the households are made up of five members. The business became a destination for customers who trusted the products and began buying their sandwiches, deli meats, salads, and grocery needs on a daily basis. The households rely on public transportation and the store is within walking distance of the majority of its customers offering the possibility of making daily grocery shopping without needing public or private transportation;
- The owner's goal was to open a business where she can deliver superior products and exceptional service. Her research showed this area was perfect and she invested financially, emotionally, and physically in the business in order to create sustainable income. She knows trafficking does not produce sustainable income and that it would be foolish to resort to such practices. If trafficking were an incentive, the owner would not have waited to begin trafficking in 2016 when she started the business in 2014. The business is family owned and is the sole source of income so there is zero tolerance for illegal transactions. In 2015, the business purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory and in 2016 purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – an increase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which translates to an increase in legitimate sales. Since 80 percent of inventory is SNAP eligible that leaves

no room for trafficking. If trafficking were occurring there would not be such a high increase in purchases since there would not be a need to reorder merchandise. The owner's bank statements confirm the continuous increase in merchandise purchases thus the increase in sales explains the large purchase transactions made by SNAP recipients. The bank statements also demonstrate Restaurant Depot monthly purchases that contain only deli items, thus 100 percent eligible. Between 2015 and 2017, the deli purchases from Restaurant Depot increased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in 2015 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month in 2017;

- The shortest time referenced in Attachment 1 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is enough time for a customer to realize they are missing items from their grocery list. Also, the fact that the second transaction is smaller than the first transaction is an indication they forgot something such as ice cream. For example, the cardholder will quite often send his/her children to purchase candy, snacks, deli sandwiches, pre-made calzones, or drinks after they already purchased their grocery needs. Sometimes cardholders will let other family members or friends use their card. The store's only verification is that the user knows the PIN. Some EBT users are college students who rely on the market for their daily grocery needs and they tend to run high grocery bills. This also happens with credit/debit card purchases as well. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A sample of register receipts for valid transactions is provided that refute trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are also pictures of the business showing it caters to all possible needs of a typical household and a price list showing items 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that is evidence of how easy it is to run a high grocery bill;
- The owner does not see how purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are considered an excessive amount for a 2,500 SF business that makes annual purchases of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per year. The list of sale items shows how easy it is to run a bill to over 5 U.S.C. § 552 (b)(6) & (b)(7)(C): 1.34 LB Enfamil Infant Formula-\$29.99, Imperial Dragon Jasmine Rice-\$23.98, and Enfamil 16-17 17.6 G Packets-\$19.99. A complete list of prices is also included. Traffic increases dramatically on the first of the month when recipients receive their benefits. During this time there are two-three employees helping customers check-out in a smooth manner. The first clerk will be taking customers' orders for deli sandwiches, deli meats/cheese, and pre-cooked food while the customer keeps shopping for their baby needs or regular monthly grocery needs. The second clerk will be checking customers out when they are ready. Samples of itemized EBT register receipts from the same recipient accounts listed in Attachment 2 of the charge letter are provided. Furthermore, there are credit/debit card transactions as high as the SNAP transaction referred to as excessively high which further proves how easy it is to build a high grocery bill. This is also supported by the high volume of inventory purchases and turnover; and,
- The owner is only able to pay her bills because the business is making real

sales knowing that it is the only source of income for her family. The business's survival and growth is 100 percent built on legal and legitimate sales and family hard work. There cannot be any other way and no other explanation exists for that growth, but hard work and legitimacy.

Appellant submitted cash register receipts and the corresponding EBT receipts for a sampling of transactions from Attachment 1, cash register receipts and the corresponding EBT receipts for a sampling of transactions from Attachment 2, credit/debit card receipts showing only transaction totals, monthly store printouts showing credit/debit card purchases, receipts for credit/debit card purchases, banking statements, IRS 1040 Schedule C forms for 2015 and 2016, printouts from a wholesaler showing transaction dates/amounts for inventory purchases, an inventory pricelist, and photographs of the business showing store stock in support of these contentions.

The preceding may represent a 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**

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant business during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Store Background and FNS Store Visit**

The FNS initially authorized the Appellant business on February 11, 2015, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 23, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a spacious store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.

- The business stocked typical mainstream American brand products and no ethnic or unique foods.
- There were no shopping carts and only five handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout counter was approximately two feet wide by two and one-half feet deep with displays and a PIN pad on the sides limiting the amount of counter space available to place purchases upon. The small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, one POS terminal, and an optical scanner as evidenced by the store visit report and photographs.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale.
- The store visit report specifically notes that the business is not a specialty store and that there are no meat bundles or fruit and vegetable boxes.
- The store had a very limited stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The store had a small refrigerated deli display case with a small heated display case on top of it that was empty. The deli case contained a limited quantity and variety of deli meats and, in particular, deli cheeses. There was a price list for cold sandwiches, no price list for per pound sales of deli meats/cheeses, and a small prep area with a commercial slicer behind the deli case.
- The store had a very limited stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, deli meats, hot dogs), no packaged lunch meats, no bacon, no sausages, no frozen entrees, no frozen dinners, an extremely limited quantity and variety of fresh fruit and vegetables (bananas and four heads of lettuce), no frozen fruits or vegetables, a limited quantity and variety of single serving nuts, minimal quantities and varieties of soups, a minimal quantity and variety of canned and packaged staple food items, no Masa flour, no sour cream, no canned milk, no packaged cheeses, no baby foods or infant formula, no hot cereals, and a very limited number of expensive eligible food items.
- Ineligible items included: tobacco, hookahs, smoking accessories, lottery, household products, paper products, health and beauty items, jewelry, clothing, phone accessories, incense, and hot drinks while accessory foods included: candy, spices, condiments, coffee, tea, cocoa, and carbonated/uncarbonated drinks.

- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were priced with all visible staple food prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C) except for a very limited number of items priced differently such as snacks and drinks with primarily manufacturer's pricing of two for \$1.00, three for \$1.00, \$2.00, \$2.25, and two for \$3.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- The FNS store visit report listed the four most expensive items costing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for sale in the store as being a 1.5 quart container of ice cream priced at \$5.99, various sizes of jerky priced at \$6.99, a 10 ounce container of coffee priced at \$6.99, and a six ounce package of almonds priced at \$5.49. The listing of the most expensive items was provided by store employees during the store visit.
- The store was not a WIC vendor and did not stock any baby foods or infant formula.
- The store visit inventory form, completed in conjunction with store employees, specifically noted that no infant formula or baby food was in stock.
- The business's hours of operation were 7:00 AM-11:00 PM daily as confirmed by the store manager, who was the store owner, during the store visit.
- The store visit photographs showed that some shelves were marginally stocked.
- The quantity and variety of the store's staple food inventory was marginally better than that seen during the previous FNS store visit on February 7, 2015.

### **Multiple transactions in unusually short time frames**

This Attachment documents 33 individual transactions in 16 sets of two or more transactions conducted by 13 different households in a short period of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of the subsequent transactions in each set are all substantial and they nearly equal or exceed the dollar amount of the initial transaction in eight of the 16 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One transaction set is comprised of three individual transactions and the remaining 15 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends that the shortest time referenced in Attachment 1 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is enough time for a customer to realize



they are missing items from their grocery list. Also, the fact that the second transaction is smaller than the first transaction is an indication they forgot something such as ice cream. For example, the cardholder will quite often send his/her children to purchase candy, snacks, deli sandwiches, pre-made calzones, or drinks after they already purchased their grocery needs. Sometimes cardholders will let other family members or friends use their card. The store's only verification is that the user knows the PIN. Some EBT users are college students who rely on the market for their daily grocery needs and they tend to run high grocery bills. This also happens with credit/debit card purchases as well.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are also pictures of the business showing it caters to all possible needs of a typical household and a price list showing items 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that is evidence of how easy it is to run a high grocery bill.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as all of the 16 transaction sets occur over a period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in eight of the 16 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions indicate that the amounts were contrived by store employees trying to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows that this same pattern of multiple transactions in unusually short time frames was not evident at other nearby like type convenience stores further supporting that trafficking was occurring at the Appellant business during the period under review. The credit/debit card receipts and printouts do not provide any relevant evidence as the business sells a variety of ineligible items and the receipts and printouts are not itemized. Appellant's photographs and price list will be addressed in the next section.

An analysis of the shopping patterns for the 13 households listed in this Attachment shows that all of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant's location with all of the households shopping at a large number of super stores, supermarkets, and medium grocery stores. This analysis further shows that all 13 households conducted 15 or fewer transactions at the Appellant business during the six month period under review with nine of the 13

households conducting seven or fewer transactions indicating that all of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to conduct multiple transactions totaling to large dollar amounts in short periods of time. It is also unusual that, based on the amount of the monthly SNAP issuance, 10 of the 16 transaction sets were conducted by single person households. It is highly atypical behavior for single person households to exhaust a significant portion of their monthly SNAP allotment in a series of multiple transactions totaling to large dollar amounts at a convenience store offering a very limited stock of staple food items when they are also shopping at super stores or supermarkets.

FNS records show there are six super stores and four supermarkets located within 1.88 miles of Appellant's location that offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked convenience store that offers no fresh or frozen meats and has an extremely limited stock of fresh fruits and vegetables. There is a medium grocery store located one-half mile away that specializes in fresh meats and seafood, has a wide selection of fresh produce, offers American and ethnic foods, offers bulk products such as rice and cooking oil, is a WIC vendor, and has a full selection of other grocery items and frozen foods. The Appellant business is not a WIC vendor. There is also a convenience store located steps away from the Appellant business that has a deli with a greater variety of deli meats and cheeses as well as prepared sandwiches and salads, offers a wide variety of frozen dinners and entrees, has a greater quantity and variety of fresh fruits and vegetables, and has a better selection of canned and packaged staple foods. Empire Street has fixed route bus service that would facilitate shopping at other stores.

Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any plausible explanations for the irregular shopping patterns exhibited by the households in this Attachment. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at much larger stores offering a greater quantity and variety of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a convenience store that offers a minimal selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series

of SNAP purchases that total to large dollar amounts.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

## High Dollar Value Transactions

This Attachment lists 174 individual EBT transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a convenience store of this size offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$8.49 for this store type in Providence County. The 174 excessively large SNAP EBT transactions at Appellant's business for the review months 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual and indicative of trafficking.

The record shows that within a 1.0 mile radius of Appellant's store there are 41 SNAP authorized retailers including: one supermarket, three medium grocery stores, two small grocery stores, one meat specialty store, one bakery, five farmers markets, six combination grocery stores, and 21 convenience stores. There are an additional six superstores and three supermarkets located within 1.88 miles. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

Evidence shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Providence County convenience stores during the review months and at the Appellant business is significant. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The unusually high number of SNAP transactions is an indication that the business may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby convenience stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the

same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The list of sale items shows how easy it is to run a bill to over 5 U.S.C. § 552 (b)(6) & (b)(7)(C): 1.34 pound Enfamil Infant Formula-\$29.99, Imperial Dragon Jasmine Rice-\$23.98, and Enfamil Premium 16-17.6 G Packets-\$19.99. A complete list of prices is also included. Traffic increases dramatically on the first of the month when recipients receive their benefits. During this time there are two-three employees helping customers check-out in a smooth manner. The first clerk will be taking customers' orders for deli sandwiches, deli meats/cheese, and pre-cooked food while the customer keeps shopping for their baby needs or regular monthly grocery needs. The second clerk will be checking customers out when they are ready. Samples of itemized EBT register receipts from the same recipient accounts listed in Attachment 2 of the charge letter are provided. Furthermore, there are credit/debit card transactions as high as the SNAP transaction referred to as excessively high which further proves how easy it is to build a high grocery bill. This is also supported by the high volume of inventory purchases and turnover. In 2015, the business purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory and in 2016 purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) - 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Since 80 percent of inventory is SNAP eligible that leaves no room for trafficking. If trafficking were occurring there would not be such a high increase in purchases since there would not be a need to reorder merchandise. The owner's bank statements confirm the continuous increase in merchandise purchases thus the increase in sales explains the large purchase transactions made by SNAP recipients. The bank statements also demonstrate Restaurant Depot monthly purchases that contain only deli items, thus 100 percent eligible. Between 2015 and 2017, the deli purchases from Restaurant Depot increased from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month in 2015 to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month in 2017.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on May 23, 2017, shows that the Appellant business offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Most of the inventory for sale consists of inexpensive snacks and beverages. Additionally, the store visit report specifically notes that the business is not a specialty store and that there are no meat bundles or fruit and vegetable boxes while the store visit inventory form, completed in conjunction with store employees, specifically notes that no infant formula was in stock on the day of the visit. Since the Appellant business offers no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, deli meats, hot dogs), no packaged lunch meats, no bacon, no sausages, no frozen entrees, no frozen dinners, an extremely limited quantity and variety of fresh fruit and vegetables (bananas and four heads of lettuce), no frozen fruits or vegetables, a limited quantity and variety of single serving nuts, minimal quantities and varieties of soups, a minimal quantity and variety of canned and packaged staple food items, no Masa flour, no sour cream, no canned milk, no packaged cheeses, no baby foods or infant formula, no hot cereals, and has a very limited number of expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, hookahs, smoking accessories, lottery, household products, paper products, health and beauty items, jewelry, clothing, phone accessories, incense, and hot drinks are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has a very small checkout area, no shopping carts, and only five handbaskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Accordingly, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of many carts and thus more likely the amounts were contrived.

Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions. The receipts provided do not contain a description of the items being purchased instead listing only department codes and therefore cannot be substantiated as a purchase of SNAP eligible foods. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When one

considers that SNAP benefit allotments are calculated to provide households with a bare minimum of food security, it is unreasonable to believe that households would spend a large majority of their monthly benefit allotments at a minimally stocked convenience store. Many of the credit/debit receipts and printouts were also for transactions that occurred outside of the period under review with one credit receipt dated as far back as 2014.

No acceptable evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. The printouts provided by Appellant to document inventory purchases do show the invoice amounts and payments, but they do not provide any details on the type of items purchased and whether the items are SNAP eligible/ineligible items or staple/accessory foods. While there is no question that the Appellant business does conduct legitimate sales and purchases inventory, these are not mutually exclusive from trafficking SNAP benefits. While the tax returns and bank statements may be effective in proving the store has legitimate sales, they do not provide any evidence to rebut the trafficking charges. Appellant's contention that 80 percent of store stock is SNAP eligible and therefore leaves no room for trafficking makes no sense as trafficking typically involves an exchange of SNAP benefits for cash. Also, based on the store visit photographs, it is highly doubtful that the ineligible items (household products, lottery, health and beauty items, tobacco, smoking accessories, hookah pipes, jewelry, etc.) account for only 20 percent of stock.

Appellant's price list shows 29 items priced higher 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that includes infant formula priced at \$29.99 and \$19.99, yet during the FNS store visit the store owner could only list four items priced 5 U.S.C. § 552 (b)(6) & (b)(7)(C) higher 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While Appellant's photographs do show infant formula, large bags of rice, 36 count juice packets, large cans of coffee, sugar, etc., the photographs of the same exact store locations taken during the FNS store visit do not show any of these items. The contradiction between what was told to the contract review during the store visit combined with the discrepancies between the photographs refutes Appellant's contentions and strongly suggests that the inventory list and photographs were staged in an effort to justify the high dollar transactions and thereby avoid permanent disqualification. Furthermore, most SNAP households with infants or small children are WIC participants and therefore would be purchasing baby foods and formula using WIC vouchers at WIC vendors, not SNAP EBT benefits at the Appellant business.

It is further noted that SNAP redemptions at the Appellant business fluctuated significantly following the FNS store visit on May 23, 2017, and again following the receipt of the charge letter on September 1, 2017.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced decrease in SNAP transactions immediately following the store visit and receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

## **Other Contentions**

Appellant contends that the owner received an MBA from a local university and opened a 2,500 SF store in downtown Providence in 2014 after having studied the location. She and her husband worked 16 hours a days, seven days a week to build a good clientele and a good relationship with local customers the majority of whom are low income SNAP recipients that rely on food stamps to supplement their food budget. Most of the households are made up of five members. The business became a destination for customers who trusted the products and began buying their sandwiches, deli meats, salads, and grocery needs on a daily basis. The households rely on public transportation and the store is within walking distance of the majority of its customers offering the possibility of making daily grocery shopping without needing public or private transportation. The owner's goal was to open a business where she can deliver superior products and exceptional service. Her research showed this area was perfect and she invested financially, emotionally, and physically in the business in order to create sustainable income. She knows trafficking does not produce sustainable income and that it would be foolish to resort to such practices. If trafficking were an incentive, the owner would not have waited to begin trafficking in 2016 when she started the business in 2014. The business is family owned and is the sole source of income so there is zero tolerance for illegal transactions. The owner is only able to pay her bills because the business is making real sales knowing that it is the only source of income for her family. The business's survival and growth is 100 percent built on legal and legitimate sales and family hard work. There cannot be any other way and no other explanation exists for that growth, but hard work and legitimacy.

It is important to state that this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate 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. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or



part-time. Additionally, a record of participation in 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.

The owner's educational background and efforts to establish the business do not provide any explanation for the suspicious transactions listed in the two Attachments. The household shopping analysis previously discussed shows that most of the households listed in Attachment 1 do not consist of five members and these households also do not consider the Appellant business to be a primary location for their grocery shopping based on the substantial number of transactions conducted at other larger grocery stores. That the owner did not begin trafficking as soon as the store opened and that the business may be the only source of income for the owner and her family do not mean that trafficking did not occur during the review period. While trafficking may or may not have involved the store owner, the store owner is still responsible for all SNAP transactions conducted at the business.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "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 . . . ." SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that "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). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on May 23, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. This analysis also included a review of the business to ensure its store classification was correct and the data comparisons with like type firms valid.



Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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 for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant has not provided a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments was due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. 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. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, 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, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

### **CIVIL MONEY PENALTY**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer

Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

### **CONCLUSION**

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

## **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.

ROBERT T. DEEGAN  
Administrative Review Officer

January 30, 2018