

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

**Framingham Convenience Store,**

**Appellant,**

**v.**

**Case Number: C0191712**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon Framingham Convenience Store (hereinafter “Appellant”) by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter “ROD Office” is hereby sustained.

**ISSUE**

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

**AUTHORITY**

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 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 September 28, 2016, 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 March through August 2016. The letter noted that the sanction 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 10 days of receipt under the

conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated August 22, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On September 1, 2017, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

### STANDARD OF REVIEW

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

### CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...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, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the **Food & Nutrition Act of 2008**, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, **evidence obtained through a transaction report under an electronic benefit transfer system...** (Emphasis added.)

7 CFR § 278.6(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, in part:

**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, (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, in part:

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, in part:

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

7 CFR §278.6(b)(2)(iii) states, in part:

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 a penalty.

### **SUMMARY OF THE CHARGES**

- A series of 89 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (Attachment 1).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited too rapidly to be credible (Attachment 2).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 3).
- In a series of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) the majority or all of individual recipient benefits were exhausted in unusually short periods of time (Attachment 4).
- A series of excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 5).

### **APPELLANT'S CONTENTIONS**

In Appellant's reply to the Charge Letter, in its written request for review dated September 1, 2017, and in subsequent correspondence, it was argued that:

1. The firm allowed SNAP households to pay off credit accounts with SNAP benefits, though Appellant was unaware that this is counter to rules and regulations. Credit account documentation was destroyed after clients paid the outstanding balances. Appellant provides customer affidavits in support thereof and states that a preponderance of evidence of credit account activity exists and therefore that trafficking did not occur. As to the identity of the persons for whom credit was issued, please refer to transactions exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C); these were the result of the credit program, for which the Department already possesses credit amounts, dates and account identity.
2. There is no rule requiring that the firm keep or produce credit account documentation; the agency cannot require such evidence to be produced, so the firm not having any documentation is meaningless. It cannot be said, given the explanations provided, that the transactions are more likely due to trafficking than to credit activity.
3. Appellant cites case law pertaining to credit violations and also requests that the review officer seek legal advice in considering same. Likewise, Appellant cites case law in regard to ALERT data.
4. Appellant presents arguments that the ALERT system employed by the agency has limitations and inconsistencies, that the ROD Office has not properly utilized comparison store data. Additionally, the Department's numbers are predicated upon Appellant's comparison to other similar stores, but to find a comparable store the Department would have to venture outside of the immediate geographic area, which would then fail to account for the dense population near the Appellant's store and the local shopping habits. Had the department identified the households, Appellant would have been able to identify more participants who took advantage of the credit system offered by Appellant.
5. The firm sold Middle Eastern, Brazilian and Spanish food at lower prices than surrounding convenience stores. There are only two other small convenience stores in the area. The store carried fresh vegetables, greens, berries and fruits.
6. The store sold items in bulk, such as a \$20.00 per box for beans and rice for \$20.99. The store offered 10% off a purchase of \$50.00 or more and 20% off a purchase of \$100.00 or more.
7. Appellant's customers conform to traditional SNAP participant patterns in that they make large and frequent SNAP purchases within one week of receiving benefits. FNS data indicates that a large portion of households redeem nearly all benefits within the first two weeks of the month.
8. Appellant references a letter dated September 9, 2016 in which the department states that the Appellant firm had not redeemed SNAP benefits for at least three months. Such indicates that the Departments transaction records are inherently unreliable.
9. Regarding Attachment 1 to the Charge Letter: these are almost always the result of bulk purchasing. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When applying the discount noted above the store would occasionally round the transaction down to the nearest half or whole dollar to expedite the transaction when there is a line or a lot of customers in the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This typically occurs in the afternoon when people are leaving work or picking up children from school. As the firm's business expands it has offered more specials. Appellant provides copies of photographs showing said specials,

which began in earnest since the store visit in July of 2016. The signage increased sales in August 2016. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The credit system was informal and maintained on papers that were discarded after balances were paid. Balances were never kept in exact numbers but were rounded downward to the nearest dollar or half dollar. All large same-cent transactions are the result of this.

10. Regarding Attachment 2 to the Charge Letter: all transactions are due to credit activity. Appellant argues that the prevalence of co-shopping explains some of the Charge Letter transactions that occur in shorter-than-the-Department-expects periods of time. The first transaction was an estimate and the second based upon the actual remaining balance. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
11. Regarding Attachment 3 to the Charge Letter: this is a redundant charge – Attachment 3 includes 86 sets of transactions, more than half of which are the result of credit activity, as previously noted. A few, however, are different: 215-217 are a combination of payment of credit previously issued and then the multiple-trip shopping excursions that some of the customers use. The amounts are unusually high and rare among the local clientele but the store is prohibited from declining such purchases as long as they are for legitimate items. Other transactions are partial payments on credit. 277 and 228 follow the pattern noted above but followed the next day with a transaction to pay off the balance of the credit account. Appellant argues that the prevalence of co-shopping explains some of the Charge Letter transactions that occur in shorter-than-the-Department-expects periods of time. Transactions that occur on consecutive days are not suspicious but simply customers who went to the store two days in a row. The remainder (232 to 240) are payments on credit. 241 is a legitimate purchase.
12. Regarding Attachment 4 to the Charge Letter: the retailer has no right or authority to tell a participant how quickly they are to spend SNAP benefits; and there are no regulations governing this or preventing a household from immediately depleting their SNAP balances. However, these transactions are payments on credit accounts. These follow the same pattern, with transactions conducted to ascertain balances and then more transactions to deplete the balances/pay off credit accounts. There is a sprinkling of legitimate transactions, such as 246. Single transactions are payments on credit balances and new purchases joined together when the customer is aware of the account balance, as in transaction 254.
13. Regarding Attachment 5 to the Charge Letter: again, these are the result of credit payments, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 323 is an example of a credit payment plus with a purchase. Appellant states that transactions 327-330 and 344-349 are balance speculation examples. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
14. Appellant provides product purchase receipts/invoices in support of the above.

## **ANALYSIS AND FINDINGS**

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on July 26, 2016, as a result of which documentation was obtained including photographs of the interior and exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- No optical scanners used.
- Shopping baskets available. Photo: 22.
- No shopping carts.
- One cash register and one card reader. Check-out counter with approximately 1.5 X 2 feet of useable space and surrounded by tobacco products, lottery tickets, candy, snack foods, over-the-counter medicines, small boxes of fruit and miscellaneous non-food items. Photos: 3, 15 and 20.
- No hot food sold.
- Dining area present. Photos: 15 and 22.
- Prepared food sold.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Estimated 2000 square feet of store space.
- The firm sold tobacco and tobacco-related products (hookahs, pipes, lighters, etc.), lottery tickets, paper products, pet food, cleaning supplies, laundry detergent, health and beauty products, clothing and other non-food items.
- Empty shelves were observed/noted. Photo: 26.
- Comments: “Shopping baskets on photo 0018. Store sells hot coffee and have prepared sandwiches and a seating area.”
- Prices in standard retail variations of \$.x9. Photos: 2, 4, 6, 9, 10, 12, 13, 15, 18, 19, 20, 21, 23, 27, 30 and 32.
- Convenience store inventory and layout. Photos: 15, 17, 20, 21, 25, 31 and 32.

The documentation presents no indication of advertised specials, promotions, bulk or expensive food items. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area (approximately 1.5 by 2 feet of useable space) but was otherwise surrounded by tobacco products, lottery tickets, candy, snack foods, over-the-counter medicines, small boxes of fruit and miscellaneous non-food items. There were no shopping carts with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in the state of Massachusetts during the analysis period was \$7.27, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, it should be noted that Appellant must show by a preponderance of evidence that credit account activity, or activity other than SNAP benefit trafficking, accounts for the transaction data detailed in the SNAP Office’s Charge Letter. Such a showing is not possible in the absence of substantial documentary evidence in support thereof; a successful contention on Appellant’s behalf that the acceptance of SNAP payments on credit accounts adequately explains the transactions detailed in the Charge Letter must be accompanied by substantial and detailed documentation such as ledgers, account books or specific sales records.

Appellant provides the affidavits of nine customers/households; the ROD Office undertook an analysis of this information and provided documentation demonstrating that only three of the nine affiants conducted any of the Charge Letter transactions. Between the three households, one transaction of the 89 in Attachment 1, four transactions of the 33 in Attachment 2, two

transactions of the 86 in Attachment 3, four transactions of the 57 in Attachment 4 and four of the 233 transactions in Attachment 5 (in sum, 14 of the 498 transactions contained in the Charge Letter) were conducted using these households' SNAP benefits. While the amount of the data that is relevant to the affidavits is therefore quite small, it is noted that the affidavits for these three households does not constitute compelling data that even these few transactions were due to credit account activity. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Lastly, none of the affidavits mention that the household received credit or paid off an account using SNAP benefits. In sum, only three of the nine purported credit households had Charge Letter transactions representing 14 of the 498 transactions contained in the Charge Letter and only one, being very large, appears to fit the rationale provided in support of credit accounts as an explanation of the Charge Letter data.

Appellant provides no register receipt or sales information detailing what was purchased on credit. Appellant notes that when a credit account was paid in full, all documentation of the activity (any/all receipts, any/all ledgers, and any specific record of what customers obtained via credit and later paid for via SNAP benefits), was destroyed/discarded. Moreover, while the firm received the Charge Letter on September 30, 2017 at the height of what would reasonably be the period during the month with credit accounts at their highest levels (with the most SNAP benefits expended and the most credit debt amassed), and just prior to SNAP recipients receiving their new monthly allotments (Massachusetts issues benefits during the first 14 days of a given month), Appellant did not provide a single record verifying a credit account. Moreover, not one credit account appears to have been delinquent from a prior months, as no document recording same survived beyond Appellant's September 30, 2017 receipt of the Charge Letter.

Regarding contention 2 above, no specific kind of evidence of credit account activity is required, though that which an Appellant chooses to provide must be compelling and reasonably constitute a preponderance of evidence. In the present case, there is very little evidence provided of the existence of credit accounts and, conversely, much evidence in support of the ROD Office's assertion that SNAP-benefit trafficking substantially produced the transaction activity detailed in the Charge Letter.

With regard to contention 3 above, Appellant requests consideration of specific examples of case law it cites. However, the purpose of this review is to determine whether the ROD Office took appropriate action, consistent with 7 CFR § 278.6(a) and (e)(1), when it imposed a permanent disqualification upon Appellant; the review is therefore limited to the evidence presented and the applicable statutes and regulations. It is beyond the scope of this review to consider judicial precedent except to the extent it is already contained within the relevant statutes and regulations. While courts may have found certain explanations plausible in other cases, the explanations in the present case are not viewed as compelling. Moreover, the issue of the relevance to the current case of the case law cited is more properly within the scope of judicial review, as referenced under "Rights and Remedies."

In regard to contention 4 above, Appellant asserts that the agency's policy with regard to compliance-based sanctions based upon system data is flawed and puts forth several contentions in support of that general argument. This review has found that the ROD Office properly implemented the disqualification in accordance with the statute and regulations. The

administrative review process cannot properly include an assessment of the statute and regulations under which the agency imposed adverse actions, but rather assesses whether the agency actions undertaken were proper pursuant to those laws and regulations and sustainable by a preponderance of evidence. Additionally, challenges to the laws and regulations governing the SNAP are more appropriately within the province of judicial review.

Regarding contention 5 above, the store visit referenced above, which was conducted on July 26, 2016, reflected the presence of a small amount of ethnic food products and in fact any food product not readily available at most other convenience stores and virtually any grocery store, super store or supermarket (one of which was located .40 miles from the Appellant firm). None of the affidavits provided by Appellant make any mention of purchasing ethnic food items at the store. Appellant provides no evidence to support the contention that its prices were lower than other stores in the area. A small number of apples and bananas were seen near the check-out counter during the store visit; these were the only fresh fruits seen during said visit. Appellant states that there were only two other convenience stores in the area; however, the ROD Office notes that, at the time of the sanction decision, there were 29 SNAP-authorized firms within a one-mile radius, including one supermarket (at .40 miles), one medium grocery store (at just over one-third of a mile), five small grocery stores (three of which were from just under one-fifth of a mile to just over one-quarter mile), three combination grocery/other stores (one of which was just over one-third of a mile) and 19 other convenience stores (eight of which were from just under one-fifth of a mile to just under one-half mile).

With regard to contention 6 above, likewise, the store visit referenced above did not reflect the presence of any bulk food items; moreover, the handwritten signage depicted in Appellant's photographs of store inventory was not present on the day of the store visit. The ethnic products and signage visible in Appellant's photographs were largely absent in the store visit photographs taken during the analysis period. There was a small amount of Goya products, which are quite common in many authorized stores. Invoices indicate a small amount of Middle Eastern snack food and accessory food items. The photographs were not dated and cannot constitute reliable evidence of inventory or advertising at the store at an earlier time. Appellant provides no compelling documentation of bulk sales or an abundance of ethnic food items not likewise stocked at other firms in the area.

In regard to contention 7 above, agency data reflects that most large transactions do not occur at convenience stores but instead SNAO households expend most SNAP benefits at super stores and supermarkets; the Appellant firm is reflected by the record to be a typically-stocked convenience store in all relevant respects.

Regarding contention 8 above, the letter referenced was addressed to the owner of a business previously operated at Appellant's address under the former owner's FNS authorization number and has no bearing on Appellant's transaction data, redemption data or any other store data relevant to Appellant's authorization under its unique ownership and FNS number; as such, said letter constitutes no proof or evidence that the agency's data with regard to the Appellant firm is unreliable in any way. The former owner ceased operations and did not notify the agency; as a result it was later withdrawn from the SNAP program. Firms are routinely withdrawn due to non-response to agency correspondence (in this case, a non-redemption letter).



With regard to contention 9 above, as noted in the foregoing, no signage or other indication of bulk sales or discounts was observed during the July 26, 2016 store visit; photographs provided by Appellant appear to have been taken at some point following the firm's receipt of the Charge and/or Determination Letters and cannot constitute reliable evidence of store operations or inventory at an earlier time. No sales receipts, inventory or other records were provided to support Appellant's contention that bulk sales explains any of the transactions contained in the Charge Letter. Affidavits provided by Appellant do not mention customers buying in bulk. Also as noted, the record contains little evidence of credit accounts.

In regard to contention 10 above, as noted, the record contains little evidence of credit account activity; the affidavits, upon which Appellant relies most heavily to support its credit account rationale, contain no mention of credit having been extended at the Appellant firm during the analysis period at issue. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant'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 from a shopping cart (the firm did not provide shopping carts, however; thus it is unclear how customers transported large orders to the register or to waiting transportation), 2) separating eligible from ineligible items, 3) the cashier's handling of individual items to determine the price, which in this case involved manual keying of amounts, 4) weighing individual items if sold by weight, 5) entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases, 6) handling manufacturers cents-off coupons, if applicable, 7) bagging the items for carry out, 8) informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions), 9) pressing the "SNAP transaction key" on the point-of-sale device/card reader, 10) swiping the card, 11) customer entry of the required PIN, 12) cashier entry of the purchase amount, 13) confirming customer has a sufficient benefit balance, 14) the transaction being processed by the system and receiving approval, 15) printing out receipts, 16) accepting an alternate form of payment for nonfoods and possibly handling cash change and 17) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases, regardless of whether a firm utilizes a calculator or not. One can readily surmise that while such transactions may be completed in succession, 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 transactions. Limited counter space as well as manually key-entering 19-digit card numbers adds additional time to transactions. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Frequent and large transactions conducted rapidly in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, processed rapidly is implausible. Appellant's rationale regarding how it may conduct such transactions rapidly is not compelling. Moreover, the record further reflects that Appellant's number of rapid transactions during the analysis period was multiple times that of

three nearby SNAP-authorized stores (all convenience stores, also carrying ethnic food items, within approximately one-quarter of a mile of the Appellant firm).

Regarding contention 11 above, as noted in the foregoing, the record contains little evidence of credit account activity. Regarding the contention that Attachment 3 is redundant, Attachment 2 contains 33 transactions while Attachment 3 contains 86; while some transactions appear in both, there are many more that do not. Additionally, the attachments differ substantially in the scope of their respective timeframes.

Additionally, while there are legitimate reasons why a SNAP recipient or household member might return to a convenience store during a short period of time, such purchases are more typically in small amounts and for obtaining just a few items. The examples in Attachment 3 indicate a series of repetitive purchases that total large amounts. Customers spending such substantial amounts of SNAP allotments in a typically-stocked convenience store, when there are other larger food stores nearby which carry substantially larger varieties of food at lower costs, is implausible. Lastly, large transactions for the purchase of legitimate food items (which at this store would have been a substantial number of lower priced items), using no shopping carts and very little checkout-counter space, is additionally implausible.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Moreover, the record further reflects that Appellant's number of repetitive transactions during the analysis period was multiple times that of three nearby SNAP-authorized stores (all comparable convenience stores, also carrying ethnic food items, within approximately one-quarter of a mile of the Appellant firm). Frequent and large transactions conducted in order to purchase eligible foods at Appellant's store are highly unlikely given Appellant's logistical wherewithal and store stock. There is no compelling rationale to explain why only, or primarily, Appellant's customers made repetitive visits spending large amounts in short timeframes. The record reflects, as noted above, that the Appellant firm was a typically-stocked convenience store in all relevant respects and provides no plausible bases for customers' unusual attraction to the firm and unorthodox transaction patterns.

With regard to contention 12 above, as noted, the credit account rationale is not supported by the record. Attachment 4 contains instances in which SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week following benefit issuance. The likelihood that these transactions were the result of the legitimate sale of eligible foods only is extremely small. Additionally, a government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 79 percent of a household's allotment remains unspent. After seven days 41 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 79 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Depleting one's entire allotment in one or two days during the first week following benefit issuance, in a single large transaction or in a series of high cumulative transactions in a short period of time, especially in a typically-stocked convenience 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

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<sup>1</sup> Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Final Report. Prepared by Mathematica Policy Research for the Food and Nutrition Service, USDA, February 2011.

short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to divert attention to signs of same.

In regard to contention 13 above, as noted, Appellant's credit account rationale is not supported by the record. The ROD Office further notes that the two largest transactions in Attachment 5, conducted by the same household, 5 U.S.C. § 552 (b)(6) & (b)(7)(C); this household, moreover, was not identified as having a credit account. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Regarding contention 14 above, invoices/receipts provided by the Appellant were not organized by vendor or date; these were tabulated and totaled by the ROD Office and verified by the review officer. Some of the invoices do not distinguish eligible from ineligible items; the coffee invoices do not separate hot coffee sales from eligible food sales; other invoices include clearly ineligible items (such as tobacco-related products). Nine invoices had no vendor name, two indicated no date and four were illegible. The remaining invoices do not indicate that the firm had purchased adequate inventory to support SNAP redemptions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of a trafficking civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated September 28, 2016, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in 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 (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1), §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

## **CONCLUSION**

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30<sup>th</sup> day following Appellant's receipt of this document.

## **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 provisions of the Freedom of Information Act (FOIA), FNS is 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.

DANIEL S. LAY  
Administrative Review Officer

April 11, 2018