

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

Friendly Corner Inc,

Appellant,

v.

Case Number: C0201207

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 decision by the Retailer Operations Division to impose a permanent disqualification against the Friendly Corner Inc (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 12, 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 17, 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 January 2017 through June 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 responded to the charges in a letter submitted via fax on August 24, 2017, but the response neither requested nor contained any evidence to be considered in support of the CMP. Appellant's response also admitted to the business offering credit accounts. The Retailer Operations Division, by letter dated August 25, 2017, requested evidence of the existence of credit accounts at the business. Appellant responded to their request by letter submitted via fax on September 7, 2017, that included copies of five undated pages of credit receipts. The Retailer Operations Division notified Appellant in a letter dated September 12, 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 September 15, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. By letter dated September 20, 2017, Appellant was notified by this Review Officer of the procedures for requesting information or documents under the Freedom of Information Act (FOIA) and to notify me if a FOIA request was filed. No subsequent correspondence 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 § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

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 January 2017 through June 2017. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple purchase transactions were made too rapidly to be credible.

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

APPELLANT'S CONTENTIONS

In the response to the letter of charges, in the response providing documentation of credit accounts, and in the request for administrative review, Appellant has stated as its position in the matter the following:

- The multiple transactions are because the business allows credit accounts. The customers make a purchase and pay their credit account in two transactions at the same time;
- The store owner has no control on who uses an EBT card. Sometimes a customer makes a purchase and right after remember something else and come back and pay again;
- The large transactions are because customers sometimes buy six plus cans of Similac, and sometimes come and buy 10, 15, 20, or 25 hoagies at one time. The owner sometimes tries to help them by giving them credit and they pay him back when they get money on their EBT cards. There's also a grocery store at F Street and Hilton Street that lost its SNAP license around the same period and that's one of many reasons why sales increased. People in the neighborhood also don't like to go to the supermarket and normally come to the store and buy what they need even if it is three or four times a day. The business's prices are very competitive and for that reason there are a lot of customers and the business is very busy;
- SNAP sales are the biggest source of income for the business and the owner takes his business very seriously and would never put it in risk; and,
- Appellant requests a review of the case and all of the questioned transactions; and,

Appellant submitted five undated pages of credit receipts and four receipts for Similac infant formula dated January 4, 2016; January 7, 2017; February 28, 2017; and March 21, 2017, 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 December 29, 2016, and the business is classified as a small grocery store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 5, 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 small grocery store of approximately 400 SF offering a moderate quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- There were no shopping carts or 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 area was a window approximately one foot by one foot set into a plastic security wall that opened to a counter area approximately three feet by one foot. There were displays on both sides and a large ice cream freezer directly in front of the checkout area that customers must reach over in order to place their purchases onto the checkout counter. The very small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, no scanner, and one point-of-sale (POS) terminal.
- No food packages, bundles, case sales, bulk products, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale.
- The store had a large refrigerated deli display case, a smaller heated display case, and a kitchen area containing a cooktop grill, exhaust hood, heated sandwich press, prep tables, commercial slicer, commercial scale, etc.
- A large menu board advertised a variety of hot/cold, ready-to-eat prepared sandwiches and hot breakfast items. The store visit report noted that store staple food stock such as deli meats, deli cheeses, vegetables, etc. were also being used in the preparation of the hot/cold, ready-to-eat prepared foods.
- The store had a moderate stock of staple foods that consisted of many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, Ramen noodle soups, and ineligible items.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats (deli meats, bacon, hot dogs, sausages, frozen fish, and canned meat/poultry/fish), no packaged lunch meats, only three dozen eggs, no family size frozen entrees, a limited number of single serving Banquet dinners and single serving pizzas, no yogurt, a moderate selection of fresh fruits or vegetables, no frozen fruits or vegetables, a moderate quantity and variety of canned and packaged staple food items, no infant formula, limited baby foods, and no expensive eligible food items.

- Ineligible items included: tobacco, hot ready-to-eat prepared foods, household products, paper products, pet products, health and beauty items, ATM, and diapers while accessory foods included: candy, spices, condiments, coffee, tea, cocoa, and carbonated/uncarbonated drinks.
- The store was not a WIC vendor. Most SNAP households with infants or small children are WIC participants and therefore would be purchasing baby foods at WIC authorized vendors using WIC vouchers, not SNAP EBT.
- Signage in the store 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 prices ending in .x9 cents. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- 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 10 pound bag of Goya rice priced at \$9.99, a one gallon container of Goya vegetable oil priced at \$9.99, a one pound package of Arnold Beef Sausage priced at \$5.89, and one pound package of Smithfield bacon priced at \$5.49. This listing of the most expensive items was provided by a store employee during the store visit.
- Store hours were confirmed by the contracted reviewer with a store employee during the FNS store visit as being open 8:00 AM-9:00 PM Monday-Saturday and 9:00 AM-8:00 PM Sunday.
- The quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit conducted on December 20, 2016.

Rapid Transactions

This Attachment documents 37 sets of back-to-back transactions made in rapid order at the same POS terminal. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The same household conducted both of the transactions in only three of the 37 sets.

Appellant contends that the multiple transactions are because the business allows credit accounts. The customers make a purchase and pay their credit account in two transactions at the same time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the business has no shopping carts or hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier 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); 10) the cashier pressing the “SNAP transaction key” on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) 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. 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. The extremely limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

Appellant’s claim that the rapid transactions are the result of a household making both a purchase as well as making a separate payment on their credit account is refuted by the fact that the same household conducted both transactions in only three of the 37 sets listed in this Attachment. Appellant provided no explanation for the remaining 34 sets.

The Appellant business processed transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, markedly faster than supermarkets typically process purchases, yet the Appellant business has only one 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. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant’s stock could be processed in the times listed in this Attachment given that the Appellant business has very limited checkout counter space and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

Based on this discussion, as well as the stock and facilities present at the Appellant business, it is unbelievable that these large dollar value transaction sets could occur in the short periods of time listed if they involved legitimate eligible food purchases. It is therefore more likely that the transactions listed in this Attachment are attributable to trafficking.

Multiple transactions in unusually short time frames

This Attachment documents 180 individual transactions in 76 sets of two or more transactions conducted by 55 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These include an unusual number of transactions (24) ending in the same cents amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** accounting for more than 13 percent of the transactions that are not supported by the store’s pricing structure or by store inventory.

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 54 of the 76 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Four transaction sets are comprised of four individual transactions, 20 sets are comprised of three individual transactions, and the remaining 52 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 again contends that the multiple transactions are because the business allows credit accounts. The customers make a purchase and pay their credit account in two transactions at the same time. The store owner also has no control on who uses an EBT card. Sometimes a customer makes a purchase and right after remembers something else and pays again. People in the neighborhood also don't like to go to the supermarket and normally come to the store and buy what they need even if it is three or four times a day.

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 small grocery 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 making a purchase followed by a payment toward their credit account as all, but one of the transaction sets occur over a period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 54 of the 76 sets. It is also unusual based on the available food stock that all of the transaction sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average small grocery store SNAP transaction amount in Philadelphia County during the period under review was \$9.04, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This quantity of same cents transactions exceeds the probability of occurring with legitimate food purchases and indicates that these 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.

An analysis of the shopping patterns for the 55 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 considerable distance from Appellant's location. Contrary to Appellant's statement that people in the neighborhood do not like to go to the supermarket, only four of the 55 households listed in this Attachment did not shop at a supermarket or super store during the period under review. This analysis further shows that 45 of the 55 households conducted 15 or fewer transactions at the Appellant business during the six month period under review with 15 households conducting only two, three, or four transactions indicating that more than 81 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to use store credit. It is also

unlikely that store ownership would extend credit to customers who do not regularly shop at his business.

FNS records further show there are two super stores, five supermarkets, one large grocery store, and six medium grocery stores located within one mile of Appellant's location that would offer greater quantities and varieties of food items at lower prices than would be found at a minimally stocked small grocery store. One of the medium grocery stores is located within 440 yards of Appellant's location. 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 viable explanations for the irregular shopping patterns exhibited by the households in this Attachment as contentions of credit have been unsubstantiated. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity 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 small grocery store that offers a moderate 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 recipient 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. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 583 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is atypical for a moderately stocked small grocery store of this size 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 \$9.04 for this store type in Philadelphia County. The 583 excessively large SNAP EBT transactions at Appellant's business for the review months represents **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The record shows that within a one mile radius of Appellant's store there are 154 SNAP authorized retailers including: two super stores, five supermarkets, one large grocery store, six medium grocery stores, 90 small grocery stores, one meat specialty store, one seafood specialty store, one produce specialty store, 10 combination grocery stores, and 37 convenience stores. There are 16 stores that include a medium grocery store, 11 small grocery stores, and four

convenience stores located within 0.25 miles or less than 440 yards of Appellant's location. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater variety and quantity 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 also shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Philadelphia County small grocery stores during the review months and at the Appellant business is significant.

5 U.S.C. § 552 (b)(7)(E). 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 small grocery 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.

Appellant contends the large transactions are because customers sometimes buy six plus cans of Similac, and sometimes buy 10, 15, 20, or 25 hoagies at one time. The owner sometimes tries to help them by giving them credit and they pay him back when they get money on their EBT cards. There's also a grocery store at F Street and Hilton Street that lost its SNAP license around the same period and that's one of many reasons why sales increased. People in the neighborhood also don't like to go to the supermarket and normally come to the store and buy what they need even if it is three or four times a day. The business's prices are very competitive and for that reason there are a lot of customers and the business is very busy.

Regarding the purchases of infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing infant formula using WIC vouchers, not SNAP EBT; consequently the infant formula purchases do not provide a valid explanation for these excessively large purchases. Although the menu board at the Appellant business did not list the individual prices for the many hot and cold, prepared and ready-to-eat foods, it would be reasonable to expect most hoagies would be in the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) range as evidenced by the sign advertising a cheesesteak special of \$5.00 that included a can of soda on the deli case of the Appellant business on the day of the FNS store visit. This price range for 20 or more hoagies would result in numerous transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that are not supported by the transactions listed in this Attachment. Appellant also provided no evidence, such as itemized cash register receipts, in

support of this contention. Additionally, it is unlikely that the alleged purchase of unbelievable quantities of hoagies would account for all of the 583 individual transactions listed in this Attachment leaving trafficking as the most likely explanation.

Information obtained during the FNS store visit on July 5, 2017, shows that the Appellant business offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Since the Appellant business carries no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats, no packaged lunch meats, only three dozen eggs, no family size frozen entrees, a limited number of single serving Banquet dinners and single serving pizzas, no yogurt, a moderate selection of fresh fruits or vegetables, no frozen fruits or vegetables, a moderate quantity and variety of canned and packaged staple food items, limited baby foods, and offers little or no expensive eligible food items, these patterns are deemed to be suspicious. The fact that tobacco, hot ready-to-eat foods, household products, paper products, pet products, health and beauty items, ATM, and diapers 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. Additionally, the quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit conducted on December 20, 2016. A transaction **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** may not be unusual, irregular or inexplicable if conducted at a full-line supermarket or superstore; however, this same transaction value seems unusual, irregular, or inexplicable if conducted at a moderately stocked small grocery store.

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.

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 small grocery 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 an extremely small checkout area, no shopping carts, and no handbaskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store

stock via receipts of products taken into inventory for the relevant review months. The invoices for formula purchases have been disregarded since it is unlikely that SNAP recipient households would be using SNAP benefits to purchase infant formula. 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.

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

Credit Contentions

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f), and submitted five undated pages of credit receipts in support of this claim.

Regarding the above contentions, when the store owner signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. *This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans* (Emphasis added.) The certification is clear that ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the letter of charges. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In regards to Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, Appellant submitted documentation consisting of five undated pages of

handwritten credit receipts. The receipts only list amounts and do not include dates or the items purchased on credit so it is impossible to determine if the items purchased were even SNAP eligible food items. The receipts list what appear to be Spanish nicknames (e.g. the fat one, the thin one, the grandmother, etc.) for approximately nine individuals. The receipts do not contain any contact information such as the customer's full name, address, telephone number, SNAP household account number, or SNAP EBT card serial number. Even if a business were to extend credit accounts, it seems unlikely that it would allow customers to accrue credit without having any means of contacting these individuals or verifying that they, in fact, were SNAP recipients. The receipts submitted by Appellant do not provide evidence that the store permitted credit accounts during the review period and therefore are of no probative value. Since Appellant was unable to account for any of the transactions outlined in the letter of charges, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

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 July 5, 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. 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 charge letter evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant did not provide 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 is due primarily to trafficking in SNAP benefits.

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.

Other Contentions

Appellant requests a review of the case and all of the questioned transaction. Appellant also states that SNAP sales are the biggest source of income for the business and that the owner takes his business very seriously and would never put it in risk.

Regarding Appellant’s request for review, 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, the 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.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP

regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow store ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, 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, 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

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 request a trafficking CMP or 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 three 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

December 14, 2017