

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

Glen Orange Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0204422

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Glen Orange Mart 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 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Glen Orange Mart

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 ... may ... file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated January 10, 2018, 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 July 2017 through October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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 charge letter was delivered to the Appellant via UPS on January 15, 2018.

The Appellant responded to the charge letter, either directly or through counsel, in a series of phone calls and letters, between January 16, 2018 and May 16, 2018. In general, the Appellant claimed that the irregular transactions were largely due to the normal shopping patterns of the store's SNAP clientele and the store accepting SNAP benefits on credit unknown to the owner. The Appellant also requested consideration for a trafficking CMP as it claimed that it had an effective compliance and training program. However, the request for a trafficking CMP was untimely as it was not within the 10-day period after receipt of the charge letter.

After thoroughly considering the evidence in the case and the Appellant's responses, the Retailer Operations Division issued a determination letter dated June 28, 2018. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked July 6, 2018, the Appellant, through counsel, requested an administrative review of the permanent disqualification decision. The request for administrative review was granted.

STANDARD OF REVIEW

It should be noted that, in this appeal, the Appellant quotes a different administrative review case in which another review officer misquoted the standard of review. That review officer has stated in subsequent decisions that the standard he should have employed is that trafficking has to be the "most plausible" explanation rather than the "only" plausible explanation for suspicious transactions.

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

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7

CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, 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 § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 defines trafficking, in part, as:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption

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(i) states, in part:

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) states, in part:

- (ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]
- (iii) **If a firm fails to request consideration for a civil money penalty** in lieu of a permanent disqualification for trafficking **and submit documentation and evidence** of its eligibility **within the 10 days** specified in § 278.6(b)(1), **the firm shall not be eligible** for such a penalty. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from July 2017 through October 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 57 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that ended in 00 cents. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 13 sets of 49 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 3:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 84 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- Glen Orange Mart operates as a grocery store and is in a low-income area where the majority of residents receive SNAP benefits. The Appellant store stocks a variety of basic grocery goods, including, but not limited to, nuts, candies, chips, canned meat, bakery cakes, canned vegetables, bread products, eggs, milk, rice, beans, cooking oils, tea, sugar, flour and cereal.

- The agency’s ALERT system is over utilized by the USDA. The ALERT system fails to account for special business practices, differences in demographics, foodstuff and geographic areas.
- As supported by a written statement in the case, a store employee was accepting SNAP benefits as repayments on credit accounts unbeknownst to the owner.
- The Appellant speculates that the employee often rounded down the credit repayments and broke them up into separate parts to disguise the transactions. The employee kept individual credit records but destroyed them after credit accounts were repaid and therefore the Appellant can only provide two (2) pages as evidence. However, the employee’s notarized statement identifies some households who participated in these credit transactions.
- In addition, written letters from eight (8) of the SNAP participants who participated in the credit issuance program at the store run are provided as evidence.
- The store employee who ran the credit program participated in all the transactions identified in the charge letter. Those transactions that were not credit transactions were all legitimate transactions for food.
- Regarding Charge Letter Attachment 1, if any of these transactions were not due to repayment of SNAP benefits with credit accounts, it is possible that the even dollar transactions were the result of rounding down or were legitimate transactions that added up to even dollar amounts. Because nearly every item in the store is priced to have a high likelihood of resulting in a \$.00 cent price, the statistical possibility of the store’s transactions reflecting those values is almost a certainty. There are no local stores that sell the same items as the Appellants, nor are there other stores that sell to this customer base in such a significant volume.
- The transactions listed in Charge Letter Attachment 2 are all the result of the credit issuance program, co-shopping, and/or the habits of the SNAP clientele. If they are not credit transactions, the transactions cited in Charge Letter Attachment 2 are explainable by the increasing trend of co-shopping.
- Normally, a SNAP participant with credit would come to the Store without the prior knowledge of the exact balance that was on his/her EBT card. As such, the participant would authorize the Store to run a certain amount, which they were reasonably certain was less than the current balance on the card, and, upon approval of the transaction, would make a second payment or pay off the credit balance. These first transactions were designed to process one transaction, generally at a much smaller amount than the second transaction, which would then allow the participant to obtain the balance on their account.
- Additionally, it is important to note that Arizona SNAP participant household benefits are issued on the 1st through the 13th day of the month based upon the last digit of the client’s case number. Here, out of the thirteen (13) transaction matrices contained in Attachment 2, all but two (2) of them were conducted between the 1st and 13th day of their respective months.
- Regarding Charge Letter Attachment 3, 63 of these transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. How the Department can categorize **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** transactions as “excessively large” is not clear.
- Regardless, these transactions are the result of the previously issued credits, the result of co-shopping, and/or are the normal reflections of a SNAP participant’s shopping

habits which in the case of this store consists of purchases of soda, flavored drinks, and candy.

- The Appellant maintains strict and thorough compliance training programs for the store's employees. As part of its ongoing training programs, the Appellant store owner sends regular text messages to the store's employees regarding the store's anti-fraud policies and reminders that failure to comply with the SNAP regulations and/or other State and local laws will result in criminal punishment and employment suspension and/or termination.
- Prior to receiving the charge letter, the store utilized the Ready Training Online ("RTO") platform to train its employees in many areas of the law, including SNAP regulations and compliance. The employees are required to complete the SNAP training program wherein they receive a training certificate from the RTO program. Prior to utilizing RTO, the Appellants would personally train the store's employees on the SNAP program, send constant SNAP reminders via text messages, and utilized the signage around the Store outlining the Store's anti-fraud policies.
- The Appellants have each employee sign EBT and ID training agreements in order to ensure that each employee agrees to comply with the SNAP regulations "as stated in the orientation video, documentation and in person training." The Appellant also utilizes a mystery shopping program in order to ensure compliance.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Glen Orange Mart for the SNAP on February 25, 2013. During the review period of July 2017 through October 2017, the Retailer Operations Division classified the store as a convenience store.

In its initial application and subsequent reauthorization applications, the owner signed a form acknowledging that the owner was aware of the SNAP regulations and understood those regulations. This included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or for ineligible non-food items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a November 12, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Glen Orange Mart is approximately 2,000 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store had an optical scanner, but did not have any conveyor belts at the checkout.
- The store did not have any large bulk foods for sale. The store did not sell fresh meat bundles, seafood specials, and/or large fresh fruit and fresh vegetable boxes.
- Store personnel confirmed that there was no food stored outside of view in a storage area or stored offsite.
- There were dusty cans and packages which indicated that the store's food inventory did not turn over frequently.
- Store personnel stated that the store did not round prices up or down at checkout.
- Store personnel stated that the store did not have a special pricing structure such as most items being priced at even dollar amounts. Instead, the store pricing was typical for a retail store with prices generally ending in nine (9) cent amounts such as 29, 39, 49 or 99 cents.
- The checkout area consisted of a small countertop surrounded by displays of candy and snack items for sale. The available counter space for stacking purchases was approximately 3.5 by 2 feet. The limited space at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible **staple** food carried by the store consisted mainly of a limited selection of inexpensive canned and packaged goods. The store sold a larger amount of snack foods, ice cream, popsicles, potato chips, candy and other accessory food items such as carbonated sodas, coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, alcohol, lottery tickets, automotive products, CDs and DVDs, and sunglasses. The store also had an ATM and offered a money transfer service. The store also sold SNAP ineligible prepared foods not intended for home preparation and consumption. Store personnel confirmed that the most expensive food items sold by the store was a package of 5.5 ounce Chicken Carbonara at \$9.29; 2.85 ounces of Jack Links at \$6.39; a 12-pack of soda at \$5.99; and a pint of Talentini Gelato at \$5.99. However, the store did not appear to have large quantities of these items for sale. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Credit Accounts

The Appellant claims that it is likely that most of the transactions cited in the charge letter were repayments on credit accounts. The Appellant provided a statement from a store employee that he was running a secret credit program for SNAP customers without the knowledge of the store owners. The Appellant states the credit account information was kept on a yellow notebook. When a payment was made on a credit balance, the employee would remove the page from the credit ledger and discard it. For that reason, the Appellant was only able to locate a couple pages from the credit ledger which were provided for the administrative review. The Appellant also provided eight (8) statements from store customers claiming that they purchased food on credit as well as a list of other customers who allegedly participated in credit repayments with SNAP benefits.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. 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. The two (2) pages that were submitted do not meet these requirements for the following reasons:

- There is nothing in the document to indicate that this from a ledger maintained for the Appellant store.
- There is no SNAP recipient-identifiable information.
- The document does not indicate what items were purchased on credit, when the items were purchased, when the account was paid off, or whether it was paid off by cash, check, credit card or SNAP benefits.
- None of the “credit charges” on the ledger match up to any SNAP transactions.

The Appellant provided letters from eight (8) alleged SNAP customers claiming that the store allowed them to repay credit accounts with SNAP benefits. However, using the identification provided in the letters, the Retailer Operations Division determined that three (3) of the individuals could not be confirmed as SNAP recipients in the State administrative terminal. Five (5) individuals were SNAP recipients but did not have any transactions cited in the charge letter. Only one (1) individual was both a SNAP recipient and had transactions appearing in the charge letter.

The store employee who allegedly maintained the credit ledger also identified seven (7) additional individuals who he claimed used SNAP to pay off credit accounts. The Retailer Operations Division determined that one (1) individual could not be identified as a SNAP recipient in the State administrative terminal. One (1) individual was a SNAP recipient but did not have any transactions cited in the charge letter. The remaining five (5) individuals had transactions cited in the charge letter. Thus, only six (6) of the 15 SNAP recipients identified by the Appellant had SNAP transactions that were cited in the charge letter. The Retailer Operations

Division reviewed the transaction history of these six (6) households and determined that three (3) might have had some credit repayments, but these were still doubtful.

As there were 33 households with irregular transactions identified in the charge letter, there is insufficient evidence to support the Appellant's claim that most of the transaction patterns cited in the charge letter were due to repayments of credit accounts with SNAP benefits.

ALERT System

The Appellant makes multiple contentions regarding the limitations of the agency's ALERT system and states it is relied upon too heavily by the agency. With regard to these contentions, it should be noted that the ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior, local conditions, and a comparison of similar stores in the area using transaction data from the same review period, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. In addition, the Appellant is always given a chance to explain the specific transaction patterns before the determination letter is issued.

The legality of this methodology is supported by 7 CFR § 278.6(a) which 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.]

Court Cases

The Appellant further cites some case law which it claims supports its position on the ALERT system and on other contentions made in the administrative review. Although the Appellant may disagree, considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

Same Cent Transactions

Charge Letter Attachment 1 lists 57 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that ended in 00 cents with the largest transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the review period, Glen Orange Mart conducted 1,784 SNAP transactions and there were 302 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Of these larger dollar purchases, 571 SNAP transactions (18.87 %) ended in 00 cents. When such repetitive patterns are unsupported by special pricing structures they are an indicator of trafficking in SNAP benefits.

The Appellant states that, if any of these transactions were not due to repayment of SNAP benefits with credit accounts, it is possible that the even dollar transactions were the result of rounding down. However, store personnel during the time of the store visit stated that the store did not round prices up or round prices down at checkout.

The Appellant also states that these may have been legitimate transactions that naturally added up to even dollar amounts. The Appellant further states that because nearly every item in the store is priced to have a high likelihood of resulting in a 00 cent price, the statistical possibility of the store's transactions reflecting those values is almost a certainty. However, the store visit report recorded that the store did not have a special pricing policy such as most items ending in an even dollar amount. Instead the store largely had typical retailer pricing with items ending in nine (9) cents such as 29, 39, 49 or 99 cents. In fact, store personnel identified the four (4) most expensive food items sold by the store which ended in either 29, 39 or 99 cents.

Based on the store visit report, the Appellant's food inventory during the review period contained almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. As most items in the store ended in nine (9) cent amounts, it is implausible that several of these relatively inexpensive items purchased together would disproportionately result in total purchase prices ending in 00 cents. Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more random statistical spread of ending cent ranges from 00 to 99 cents.

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter 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.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 2 lists 13 sets of 49 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits in SNAP benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This average transaction greatly exceeds the average SNAP transaction for a convenience store in Maricopa County during the review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In fact, this average SNAP transaction is approximately the same as the average SNAP transaction at a superstore in Arizona during the review period. It is not credible that a convenience store would have suspicious SNAP transactions equivalent to a superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

Regarding the Appellant's "co-shopping" contention, while different household members can use the EBT card, it is unlikely they would conduct irregular large dollar transactions in such a short period of time at a convenience store that does not offer a great variety and quantity of staple foods. Even if repeated "co-shopping" trips were made by different household members this does not explain the multiple high transactions conducted in a short period of time as cited in Charge Letter Attachment 2. Even the smallest transactions in Charge Letter Attachment 2 had an amount which is three (3) to four (4) times higher than the average purchase amount for a SNAP convenience store in Arizona. Also, if co-shopping is causing these type of patterns one would expect those patterns to be repeated at nearby competitor stores that offer a similar amount and quantity of staple and accessory food. However, this is not the case.

The Appellant claims that, normally, a SNAP participant with credit would come to the store without the prior knowledge of the exact balance that was on his/her EBT card. The participant would then authorize the store to run a certain amount, which they were reasonably certain was less than the current balance on the card, and, upon approval of the transaction, would make a second payment or pay off the credit balance. Allegedly, these first transactions were designed to process one transaction, generally at a much smaller amount than the second transaction, which would then allow the participant to obtain the balance on their account. However, the Appellant's claim is not credible. It is not necessary to run a transaction to determine the balance remaining on the card as the SNAP recipient can run a balance inquiry at the store without making a purchase. In fact, a review of the transaction history of some of the households cited in Charge Letter Attachment 2 shows that these households did conduct a balance inquiry before conducting the series of irregular transactions. Some of these transaction sets had a final transaction that exactly brought the balance of the card to zero. Lastly, a review of Charge Letter Attachment 2 does not show, with the exception of one set of transactions, that the first transactions were "much smaller" than the succeeding transactions.

Additionally, the Appellant notes that Arizona SNAP participant household benefits are issued on the 1st through the 13th day of the month based upon the last digit of the client's case number. The Appellant states that out of the thirteen (13) transaction sets contained in Attachment 2, all but two (2) of them were conducted between the 1st and 13th day of their respective months. It is true that SNAP recipients tend to conduct transactions earlier in the month when benefits first became available, but this is true at all stores and does not explain why

Glen Orange Mart exhibits the irregular transaction patterns described in Charge Letter 2 compared to other convenience stores that sell similar food items.

In conclusion, the store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or baskets for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter 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.

Charge Letter Attachment 3 cites 84 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This amount greatly exceeds the average SNAP transaction for a convenience store in Maricopa County during the review period **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This average transaction is also larger than the average SNAP purchase for a supermarket or superstore in Arizona during the review period. The largest transactions cited in the charge letter **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which is **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** higher than the average SNAP purchase for a Maricopa County convenience store during the review period. Even the smallest transactions cited in the charge letter had an amount which is three (3) or four (4) times higher than the average purchase amount for a SNAP convenience store in Arizona. The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant claims that these transactions are the result of repayment on credit accounts, the result of co-shopping, and/or are normal shopping habits which in the case of this store consists of purchases of soda, flavored drinks, and candy. As noted above, there is insufficient documentation to support that the irregular transactions are due to repayments on credit accounts. Also, the Appellant does not explain how co-shopping leads to excessively large transactions atypical of a convenience store in Arizona or Maricopa County. If co-shopping explained this pattern, then this pattern would also be replicated at other convenience stores in Arizona or Maricopa County. Lastly, purchases of soda, flavored drinks and candy are typical of a convenience store; yet, the irregular transaction patterns cited in Charge Letter Attachment 3 are not typical of a convenience store in Arizona or Maricopa County.

The Appellant states that there are no local stores that sell the same items as the Appellants, nor are there other stores that sell to this customer base in such a significant volume. However, the Appellant offers no evidence to support this and this contention appears to be mere speculation on the Appellant's part. The store visit report documents that Glen Orange Mart did not sell any items that could not be obtained at other stores. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a 1.5 mile radius of Glen Orange Mart there are 15 comparable or larger SNAP authorized stores. These nearby stores include 10 other convenience stores, two (2) small grocery stores, a large grocery store and two (2) superstores. The closest superstore is only 0.17 miles away. A government report¹ on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with a limited selection of staple foods like Glen Orange Mart.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of seven (7) households identified in the charge letter to analyze their shopping patterns at Glen Orange Mart compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Glen Orange Mart on the same day or within a day or two of shopping at supermarkets and superstores. Under these circumstances, it is highly unlikely that a convenience store with limited staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, 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 ... the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an **effective** SNAP compliance policy and program **prior** to the violations. The Appellant submitted copies of some text messages with employees regarding SNAP compliance. The Appellant also submitted signed employee EBT training agreements for employees working at the store all of which were signed on or after October 16, 2017 and were not prior to all of the violations. The Appellant provided training certificates for a program called Ready Training Online; however these certificates did not specifically identify that this was SNAP training and all were dated on or after November 30, 2017 and were thus after the review period. Other training certificates dealt with liquor licensing and carding underage purchasers of liquor and tobacco. Lastly, the Appellant provided pictures of signage offering a \$10 credit if the store employees did not card for liquor or tobacco purchases, but these signs did not relate to the SNAP. The store visit report photographs did not show any signage such as the SNAP Fraud and Abuse poster.

The criteria for a trafficking CMP in lieu of disqualification as defined under 7 CFR § 278.6(i) reads, in part:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial** evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an **effective** compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm **shall establish** that both its **compliance policy and program were in operation** at the location where the violation(s) occurred **prior to the occurrence of violations** cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an **effective** personnel training program as specified in §278.6(i)(2); and

Criterion 4. **Firm ownership** was not aware of, did not approve, **did not benefit from**, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm [Emphasis added.]

Regarding compliance policy standards, 7 CFR 278.6(i)(1) further states, in part:

As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, **FNS shall consider written and dated statements** of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current [SNAP] regulations As required by Criterion 2, **such policy statements shall be considered only if documentation is supplied** which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation.

In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

- (i) **Documentation** reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;
- (ii) **Documentation** of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;
- (iii) **Documentation** of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations [Emphasis added.]

Regarding training program standards, 7 CFR 278.6(i)(2) further states, in part:

A firm which seeks a civil money penalty in lieu of a permanent disqualification **shall document its training activity** by submitting to FNS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). [Emphasis added.]

Although the text messages offer some evidence of SNAP training, these alone do not meet the criteria described above. It should also be noted that it is difficult for the Appellant to contend that it had an **effective** SNAP compliance policy and program when it alleges that the store offering food on credit to its customers and accepting SNAP benefits as repayment on credit accounts in violation of SNAP regulations. In conclusion, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data along with the store visit provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanations for 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. 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 determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Glen Orange Mart, Appellant, is sustained.

RIGHTS AND REMEDIES

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

Under the Freedom of Information Act, 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.

RONALD C. GWINN
Administrative Review Officer

October 17, 2018