

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

**Green Apple,**

**Appellant,**

**v.**

**Case Number: C0209213**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against Green Apple (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 10, 2018.

**AUTHORITY**

According to 7 U.S.C. § 2023 and the 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**

By letter dated July 3, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in February through May 2018. 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, through counsel, responded to the charges in a letter dated August 9, 2018, which did not request a CMP or provide documentation in support of one. The Retailer Operations

Division notified Appellant by letter dated September 10, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated December 5, 2018, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

### **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 SNAP benefits.

7 CFR § 278.6(a) states: "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."

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." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: "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: "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 a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, 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 four month period of February through May 2018. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

### **APPELLANT’S CONTENTIONS**

The following 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:

- The firm is larger than most small groceries at 2,650 SF and offers more than 1,200 food products with several selling for more than \$10.00. The unique selection of available items is likely the cause of any data irregularities that USDA relied upon in its assessment. A listing of products sold is attached. The firm also sells a number of nonfood items such as home goods making a total of 2,200 items sold. The firm is essentially a full-service grocery offering staples such as produce, dairy, and other fresh, frozen, and prepared foods. It is located in a lower income neighborhood with no large groceries within reasonable walking distance. The nearest mega-mart is more than 1.5 miles away and requires travelling through parts of the city that are not walkable. Many residents do their regular shopping at the firm, especially at the beginning of each month;
- The charges are based solely on data without citing any actual on-site observations, inspections, or statements from individuals involved in SNAP or by store employees;
- The listing of products sold includes prices and a large number of these items have prices ending in .00 cents. Snack items sell for \$1.00 and other more expensive larger items such as cases of Red Bull are priced at \$48.00 or \$68.00. There is no sales tax so it is not unusual for purchases to end in .00 cents;
- The multiple transactions are regular for the community. The bulk of these transactions numbered two or three over the course of one to two days. Given the firm’s large selection and that EBT cards are also used by multiple family members, more than one

- transaction in one or two days is not unusual;
- USDA only cites data for the transactions where benefits were exhausted and many of the transactions used are from accounts that already had low balances at the time of the transactions. The purchases are not of particularly high dollar amounts considering the number of staple foods available and are not evidence of trafficking, just SNAP recipients purchasing staple food items;
  - USDA offers no information to indicate that the large purchases are not for legitimate items. Like most non-mega-mart stores, the firm does not have a system capable of producing an itemized receipt as these systems are expensive. A review of the firm's record demonstrates that large purchases would not be unusual. The firm identified the SNAP recipient who made the two largest transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) and her statement is attached. This recipient indicates that she made the purchases for herself and her son and consisted of many non-perishable items. Additionally, the firm sells a number of items priced from \$10.00-\$40.00. Red Bull cases sell at \$48.00 for 8.4 ounce cans and \$68.00 for 12 ounce cans, Nestle Nido sells for \$27.99, pistachios for \$23.99, rice for \$19.99, Ferrero Rocher for \$17.99, and another 30 items priced for over \$10.00. It is not unusual for SNAP recipients to purchase large quantities of food, especially at the beginning of the month. For recipients without cars who live within walking distance, a large number of purchases of staple items and other products early in the month is normal; and,
  - The firm did not engage in any illicit conduct and USDA's decision is based solely on data without any evidence of intent. Permanent disqualification is an extreme penalty given the fact that the firm has had no prior action against under the current ownership.

Appellant submitted an inventory price list and an affidavit from a SNAP recipient in support of these contentions.

## ANALYSIS AND FINDINGS

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. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

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 Appellant's store 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

FNS initially authorized the firm on February 10, 2017. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 12, 2018, 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 firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a reasonably sized small grocery store of 1,800 SF, per the firm's cashier, offering a moderate quantity and variety of staple foods and no distinctive services.
- The store stocked traditional American brands as well as a variety of canned and packaged ethnic foods, primarily Goya products and Middle Eastern items.
- The store visit report and photos showed no shopping carts and only five small hand baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for water.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- There was a single checkout area approximately 1.5 feet wide by 1.5 feet deep for customers to place their purchases. There were many displays on both sides further limiting the available space for purchases. The extremely small checkout area would make it problematic to process large orders. The checkout area had two cash registers, a POS terminal, and no optical scanner as confirmed by the cashier.
- The firm had a moderate stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- The firm had no fresh unprocessed meat or seafood, a minimal stock of frozen unprocessed meat and seafood, a limited quantity and variety of processed meats (canned meat, poultry, and fish, four packages of bacon, hot dogs, packaged lunch meat, and sausages), no deli meats, a very limited stock of frozen entrees and frozen dinners, eggs, a moderate quantity and variety of fresh fruits and vegetables, no frozen fruits, a limited stock of frozen vegetables, 100 percent fruit drinks, no 100 percent vegetable drinks, several packages of dried beans, dried fruit and vegetables, nuts sold by the pound, packaged single serving nuts, a limited selection of canned soups, a moderate selection of canned and packaged staple food items, no deli cheese, packaged cheese, yogurt, single serving yogurt, one sour cream, six butter, margarine, canned milk, fresh milk, single serving milk drinks, ½ and ½, coconut milk, powdered milk, bread, rolls, pitas, tortillas, no tostadas, corn meal, flour, sugar, rice, hot cereal, cold cereal, single serving Ramen noodle soups, canned pasta, dry pasta, dry noodles, pancake mixes, baking mixes, no mac&cheese, frozen French fries, frozen pizza, cooking oil, coffee, tea, cocoa, a limited selection of baby foods, one baby cereal, no infant formula, and very few expensive staple food items.
- Ineligible items included: tobacco, lottery, hot coffee, health and beauty items, household and paper products, ATM, bedding, diapers, appliances, incense, charcoal, and lighter

fluid while accessory foods included: candy, spices, condiments, snacks, baked goods, cooking oil, sugar, ice cream, single serving ice cream, coffee, tea, cocoa, baking mixes, and un/carbonated drinks.

- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were open 7:00 AM-11:00 PM daily per the cashier. The cashier also stated that the firm did not take phone/online orders, did not deliver groceries, and did not round transaction totals up or down.
- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the firm's cashier, specifically stated that most food prices end 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 food items costing more than \$5.00 for sale in the store as being a 20 pound bag of Basmati rice priced at \$19.99, a 1500 gram container of black olives priced at \$16.99, a 500 gram container of honey priced at \$8.99, and a 2000 gram container of cracked green olives priced at \$8.99. This listing of the most expensive items was provided by the cashier during the store visit.
- The firm was a not a WIC vendor.
- The store visit report and photos showed some empty or marginally stocked shelves.

### **Unusual numbers of transactions ending in a same cents value**

This attachment lists 100 transactions ending in the same cents value of .00 cents

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits. The FNS store report and photos revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of same cents high dollar transactions is irregular and suspicious for this type store.

Appellant contends that the firm's price listing for products sold includes a large number of items with prices ending in .00 cents. Snack items sell for \$1.00 and other more expensive larger items such as cases of Red Bull are priced at \$48.00 or \$68.00. There is no sales tax so it is not unusual for purchases to end in .00 cents.

The inventory report and numerous photos from the 2018 FNS store visit show the firm had a moderate stock of staple foods that included few expensive staple food items on the day of the visit making it questionable that such a large number of high dollar SNAP transactions could be for legitimate food purchases. The visit report, completed in conjunction with the firm's cashier, specifically notes that the firm's pricing structure has the majority of food prices ending in .x9 cents and that the firm does not round transaction totals up or down. The firm's pricing structure is further supported by store visit photos showing foods with prices ending in .x9 cents. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same cents value of .00 cents as multiples of nine seldom have a value ending in these amounts making it statistically impossible that this many store transactions would end in

these amounts with legitimate food purchases. Also, the inclusion of a single item with a price ending in .x9 cents would make it impossible for the transaction total to end in .00 cents.

It is also suspicious that there were six transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This amount is the monthly allowance for a single person household. It would not make sense for a single person household to exhaust their entire monthly food allotment in a single transaction at a moderately stocked small grocery store leaving no food dollars until their next month's allotment.

Regarding Appellant's claim that the 1,200 food item price list includes a large number of items with prices ending in .00 cents, a review of the list shows that prices ending in .00 cents actually comprise a very small percentage of items listed, approximately 13 percent, and that the majority of these items are snack foods or single serving size drinks. It is unlikely that SNAP recipients with limited food dollars would make purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** consisting of only snack and drink items with prices ending in .00 cents. The list does include 33 items priced over \$10.00, but only two of the 33 items have prices ending in .00 cents. These two are cases of Red Bull priced at \$48.00 for 8.4 ounce cans and \$68.00 for 12 ounce cans. A review of the FNS 2017 and 2018 store visit reports and photos show no cases of Red Bull offered for sale. Additionally, the 2018 store visit report includes a list of the four most expensive food items offered for sale. This listing, provided by the firm's cashier whose last name is the same as that of the store owner, cites a 20 pound bag of Royal Basmati rice priced at \$19.99 as the most expensive item offered and makes no mention of cases of energy drinks. Other items such as the 64 ounce package of chicken wings were also not found in the store visit reports or photos. That Appellant's price list contains items not listed in the FNS store visit reports, photos, or the cashier's statement regarding the firm's most expensive items points toward an attempt to misrepresent store inventory and pricing in an effort to circumvent the permanent disqualification.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are genuine. When many transactions end in a same cents amount, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in this Attachment have not been adequately documented as legitimate.

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

This Attachment documents 161 individual transactions in 68 sets of two or more transactions conducted by 52 different households in a short period of time. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 47 of the 68 sets. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is unlikely given the extremely small checkout area and the lack of a scanner that two transactions could be completed **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** due to the many steps needed to complete SNAP transactions and therefore more likely that this transaction set involved trafficking. There are 12 transactions occurring after or before the firm's reported business hours of 7 AM-11 PM daily with

transactions occurring as late as 12:06 AM and as early as 5:24 AM. It is an indication of potential trafficking when there are numerous transactions occurring outside of a firm's reported business hours. Four sets are comprised of four individual transactions and 17 sets of three while the remaining 47 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. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions are regular for the community. The bulk of these transactions numbered two or three over the course of one to two days. Given the firm's large selection and that EBT cards are also used by multiple family members, more than one transaction in one or two days is not unusual.

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 the store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as 62 of the 68 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day or sending their child to purchase a forgotten item or two as all of the sets have subsequent transactions in amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the 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 Hartford County during the review period was \$11.24. These multiple transactions indicate that the amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS transaction data shows this same pattern of multiple transactions in unusually short time frames is not evident at other nearby small or medium grocery stores further supporting that trafficking was occurring at the Appellant firm during the period under review. For example, there is a large grocery store located less than two blocks away from Appellant's location that offers a much greater quantity and variety of staple foods as well as a wider selection of fresh or frozen meats and produce. It would make far more sense for SNAP households in the neighborhood to shop at this store or at other larger stores that would offer a greater selection of staple foods at comparable or lower prices.

Given the moderate staple food stock at the Appellant firm and the number of larger grocery stores located nearby, it is unlikely that any SNAP household would use this firm as their primary grocery store. This was confirmed by the Retailer Operation Division's analysis of



shopping patterns for households listed in this Attachment. Their analysis shows that households have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to higher dollar amounts at a moderately stocked store. Common sense dictates that it is improbable that SNAP households with limited food dollars would choose to spend large amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It makes no sense that a household would spend large dollar amounts at a super store and a supermarket and then conduct multiple purchases at a moderately stocked small grocery store that total nearly twice the amount spent at the two larger stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

There is no legitimate reason why these households would spend so much of their SNAP allotments at a moderately stocked small grocery store when they clearly had access to and frequently shopped at larger stores that included supermarkets and super stores located nearby and at a distance. The more plausible explanation is that both households were trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. 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.

### **Near Depletions of SNAP Benefit Accounts**

This Attachment lists a total of 69 EBT transactions in 36 sets of one or more transactions involving 25 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. Two sets consist of four individual transactions, five sets have three, 17 sets have two, and the remaining 12 sets have a single transaction. The State of Connecticut issues SNAP benefits on the first three days of each month and 25 of the 36 sets in this Attachment also occurred during the first three days of the month. Additionally, all of the transaction sets listed began the day with a SNAP account balance

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Seven sets involve a balance inquiry. Balance inquiries are a method for cashiers to check the remaining SNAP balance for customers who may have forgotten their balance. SNAP POS receipts are also required to list the remaining SNAP balance and there is also a toll free number to facilitate balance checking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There are 20 sets totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) indicating that these transactions may be the result of single person households expending most,

if not all, of their monthly issuance at the Appellant firm in one or two transactions. Depleting a household's SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP households. As previously discussed, the Appellant firm's pricing structure and inventory do not support large, whole dollar purchase totals leaving trafficking as the most likely explanation.

SNAP benefits are intended to supplement the food budget for recipient households whose net income is at or below the Federal Poverty Level. A government report on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 79.1 percent of a household's allotment remains unspent. Even after seven days, 42 percent of benefits still remain unspent. It typically takes two weeks to deplete 78.1 percent of one's benefits. This report further revealed that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C), leaving a marginal amount or no benefits for the rest of the month, is inconsistent with the typical shopping behavior of SNAP households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

The store visit report shows this firm offers a moderate quantity and variety of staple foods as well as many accessory foods and ineligible items clearly showing that it does not have the depth of inventory necessary to support large numbers of high dollar transactions. The firm is also located in an area with scheduled fixed route bus service to facilitate shopping at more distant stores for households that may not have ready access to personal transportation. There are four supermarkets, one large grocery store, and two medium grocery stores located within 1.04 miles of Appellant's location with the large grocery store being only 0.15 miles or approximately two blocks away. The closest medium grocery store is 0.54 miles away and the closest supermarket is 0.65 miles. The Retailer Operations Division's analysis of shopping patterns for households shows they are regularly shopping at a variety of larger stores located nearby as well as at a distance. Based on these options, it is unlikely that most SNAP households who are shopping at larger stores that would offer a much greater quantity and variety of food products at lower prices would choose this store as a destination for making large household food purchases.

Appellant contends that USDA only cites data and has not supported the allegations with any on site investigations or statements from SNAP recipients or firm employees. The listed transactions are from accounts that already carried low balances at the time of the transactions. The purchases are not of particularly high dollar amounts considering the number of staple foods available and are not evidence of trafficking, just SNAP recipients purchasing staple food items.

Contrary to Appellant's claims, all of the SNAP households listed in this Attachment had account balances 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 25 transaction sets having balances in excess 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Regarding the purchase amounts not being particularly high, 50 of the 69 transactions listed 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and there were 31

transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) thereby refuting Appellant's claims. The Department's use of data analysis is discussed in greater detail later in this decision.

No explanations have been offered by Appellant as to why households, many consisting of a single person, would deplete or exhaust their SNAP benefits in a single day or why they would conduct multiple consecutive transactions to do so. An analysis of the household shopping patterns shows that they regularly shop at other SNAP retailers, including super stores and supermarkets, often at a distance from Appellant's location. While SNAP households do tend to make larger purchases in the days immediately following receipt of their monthly allotment, the behavior by households in this Attachment is contrary to the documented shopping patterns of SNAP households, as previously discussed, who typically make just over nine transactions each month consisting of relatively small dollar amounts. 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 high dollar value transactions at a store that offers a moderate selection of staple food items. Based on this discussion, trafficking is the only feasible explanation for these irregular shopping patterns.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 25 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

### **High Dollar Value Transactions**

This Attachment lists 153 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a moderate stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$11.24 for this store type in Hartford County and are also significantly higher than the average of \$18.38 for medium grocery stores in the County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location, that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar transactions remain questionable when considering the proximity of other stores that would be better shopping options for consumers. Based on their 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 firm, where the eligible food stock is more limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar purchases at small grocery stores out of necessity, this is not the case when they have better alternatives. FNS records show there are four supermarkets, one large grocery store, and

two medium grocery stores located within a 1.04 mile radius of the Appellant firm. There are also nine super stores, 12 supermarkets, five large grocery stores, and 12 medium grocery stores located within 2.95 miles. These larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a moderately stocked small grocery store offering no fresh unprocessed meats or seafood.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Hartford County small grocery stores during the review months and at the Appellant firm is significant. 5 U.S.C. § 552 (b)(7)(E). Appellant's SNAP transaction dollar volume and total transaction count are also 25.08 percent and 72.78 percent larger, respectively, than the County average for medium grocery stores. A comparison of Appellant's SNAP redemptions to that of nearby like type or larger stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter 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 further indication that the transactions in both Attachments do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in Hartford County. A comparison of Appellant's redemption data to County small grocery stores using ten dollar increments shows that Appellant's transaction count and dollar volume greatly exceeded that of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at which point transactions stop. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This transaction pattern and the unusual spikes in both transaction numbers and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the moderate stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the high dollar value transactions are because the firm is larger than most small groceries at 2,650 SF and offers more than 1,200 food products with several selling for more than \$10.00. The unique selection of available items is likely the cause of any data irregularities that USDA relied upon in its assessment. A listing of products sold is attached. The firm also sells a number of nonfood items such as home goods making a total of 2,200 items sold. The firm is essentially a full-service grocery offering staples such as produce, dairy, and other fresh, frozen, and prepared foods. It is located in a lower income neighborhood with no large groceries within reasonable walking distance. The nearest mega-mart is more than 1.5 miles away and requires travelling through parts of the city that are not walkable. Many residents do their regular shopping at the firm, especially at the beginning of each month. USDA offers no information to indicate that the large purchases are not for legitimate items. Like most non-mega-mart stores, the firm does not have a system capable of producing an itemized receipt as these systems are expensive. A review of the firm's record demonstrates that large purchases

would not be unusual. The firm identified the SNAP recipient who made the two largest transactions (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) and her statement is attached. This recipient indicates that she made the purchases consisting of many non-perishable items for herself and her son. The firm also sells a number of items priced from \$10.00-\$40.00. Red Bull sells at \$48.00 for 8.4 ounce cans and \$68.00 for 12 ounce can cases, Nestle Nido sells for \$27.99, pistachios for \$23.99, rice for \$19.99, Ferrero Rocher for \$17.99, and another 30 items priced for over \$10.00. It is not unusual for SNAP recipients to purchase large quantities of food, especially at the beginning of the month. It is normal for recipients without cars who live within walking distance to make a large number of purchases of staple items and other products early in the month.

Contrary to Appellant's claim of the firm being 2,650 SF, the firm's cashier told the contract reviewer that the firm was 1,800 SF during the 2018 store visit. The 2017 store visit, completed in conjunction with the firm's owner, recorded the firm as being 1,400 SF. Many SNAP retail stores are located in highly populated and economically depressed areas yet these stores do not exhibit the same unusual patterns as the Appellant firm. 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 store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment appear to have no transportation limitations as they are regularly shopping at much larger stores and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes 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 firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores. Contrary to Appellant's claim of no large groceries within reasonable walking distance and the nearest mega-mart being more than 1.5 miles away, FNS records show four supermarkets, one large grocery store, and two medium grocery stores within a 1.04 mile radius of the Appellant firm. There are also nine super stores, 12 supermarkets, five large grocery stores, and 12 medium grocery stores located within 2.95 miles. The Appellant firm can hardly be described as a full-service grocery since it offers no fresh unprocessed meat or seafood.

Information obtained during the FNS store visit on May 12, 2018, shows that the Appellant firm offers a moderate quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, condiments, drinks, and single serving foods as well as many ineligible items. The fact that tobacco, lottery, hot coffee, health/beauty items, household and paper products, ATM, bedding, diapers, appliances, incense, charcoal, and lighter fluid are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Regarding Appellant's customer statement purportedly confirming the legitimacy of the two largest SNAP purchases (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) during the review period, the Retailer Operations Division researched the SNAP recipient's household information using the Connecticut SNAP database. This research revealed that this customer has an address of record that is the same as that of the store owner. It is further noted that this property is owned by the former store owner who was permanently disqualified for trafficking in December 2014 and completed an associated period of incarceration in 2017. Customer statements are often biased as an admission to trafficking would implicate both the store owner and the customer. In this

case, the statement is particularly biased as the SNAP recipient would be implicating the person with whom she resides of trafficking. That the current store owner resides in a property owned by the previously permanently disqualified owner also supports that trafficking is occurring at the Appellant firm.

An analysis of the shopping pattern for this customer shows that 46 of its 55 SNAP purchases during the review period occurred at super stores or super markets, that the household conducted 25 transactions at a super store located near its residence that included a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm, and that the household only conducted two purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) at the Appellant firm. It is further noted that these two purchases were both manually keyed and were the only manually keyed transactions conducted by this household during the review period. Manually keyed transactions are those in which the magnetic strip on the household's EBT card is not being read by the store's POS device when the card is swiped and the clerk must manually key enter the lengthy EBT card number. A review of other EBT transactions at the firm on the dates of the manual transactions show that Appellant's POS device was functioning properly as there were swipe transactions before and after the manual transactions. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. It is an indication of trafficking when the same card is used for both manual and swipe transactions. In cases of trafficking, the manual transactions occur when a household gives a retail store its EBT card number as well as the PIN so that store employees can manually key enter the card number and then enter the PIN without needing to have the actual EBT card. This suggests the likelihood that both of the transactions by this household were not made by the SNAP recipient, but by the current or former store owner. Based on this recipient residing with the store owner, only making two purchases at the Appellant firm, the two purchases being the largest made at the firm, and both purchases being the only manually keyed transactions by the household during the review period, it is therefore highly improbable that the statement makes an accurate and legitimate representation of the facts. More likely than not, this statement was fabricated in an attempt to legitimize the high dollar value transactions in this Attachment.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food 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 also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. 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 months. The firm has an extremely small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the FNS charge letter on July 9, 2018. The average SNAP transaction dollar amount decreased 28.07 percent from July 2018 to August 2018 while the volume of SNAP redemptions decreased 35.45 percent and the number of SNAP transactions decreased 10.27 percent during the same period. A pronounced fluctuation in SNAP redemptions following receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemptions.

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

### **Other Contentions**

Regarding Appellant's denial of trafficking, the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the 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. 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. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the owner is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When the store owner signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, he confirmed he understood and agreed to abide by program rules and regulatory provisions. He also 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. The certification is clear that store 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. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The owner and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

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 disqualify 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”. SNAP regulations at 7 CFR § 278.6(a) clearly state 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”. In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. 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 review period. 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 photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. 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.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not 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 and second chances are not an authorized option under existing regulations.

### **CIVIL MONEY PENALTY**

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

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit any 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.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence by the specified deadline 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 presented a case that Appellant has likely trafficked in SNAP benefits. Their 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 consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in four 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. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to 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

May 30, 2019