

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

**Grocery Plus,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0217731**

**FINAL AGENCY DECISION**

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

**ISSUE**

The purpose of this review is to determine whether the ROD 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 June 17, 2019.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated May 28, 2019, the ROD charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations. This charge was based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states: “As provided by Section 278.6(e)(1) of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter

also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant replied to the ROD’s charges in writing. The record reflects that the ROD received and considered the information provided prior to making a determination. The ROD determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROD concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROD issued a determination letter dated June 17, 2019. This letter informed Appellant that it was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6 (c) and 278.6(e)(1) for trafficking violations. The letter also states the ROD considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROD determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On June 26, 2019, Appellant appealed the ROD’s determination and requested an administrative review of this action. The appeal was granted.

## 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 § 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 in the event that personnel of the firm engaged in trafficking of SNAP benefits.

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(a) states, in part:

Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . .

7 CFR § 278.6(c) reads, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(e)(1)(i) reads, in part:

FNS shall . . . [d]isqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

Trafficking is defined in 7 CFR § 271.2, 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”

Also at 7 CFR § 271.2, eligible food is defined as:

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

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

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).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from December 2018 through March 2019. This analysis identified the following patterns of SNAP transaction activity that indicate trafficking:

- An inordinate number of transactions ending in same-cents values;
- Multiple transactions made from the same accounts in unusually short time frames;
- Transactions that depleted the majority or all of a recipient's monthly SNAP benefits made in unusually short timeframes; and,
- Unusually large transactions.

The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's responses regarding this matter are essentially as follows:

- Appellant denies the allegations.
- There is no physical evidence of trafficking. The determination was not based on an undercover investigation. Two other investigations did not show trafficking.
- Appellant does not have control over the amount and frequency of transactions made by SNAP participants. SNAP participants do not have limitations on how they use their benefits. Retailers cannot request ID of SNAP card holders; card holders who have a valid pin may use the SNAP benefit card.
- Using retailer data to charge owners with trafficking violates the law.
- Appellant is not a typical grocery store. It carries a large inventory of bulk goods and high-priced items, including seventeen types of bulk rice some of which cost \$42.99, coffee for \$55, sausage for \$149, fish for \$155, chicken wings for \$97 and mangos for \$170.
- Many families do all their shopping at Appellant which explains the transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- Some customers request that their transaction be broken into two transactions to better track their spending.
- Customers sometimes make an additional purchase because they forgot an item.

- Customers sometimes purchase a second round of items after they find out their balance after making the initial purchase.
- Some customers like to pay for bulk items separately.
- Customers make SNAP transactions to share with others in their household.
- This is the first time Appellant was notified of issue with SNAP compliance.
- A lesser penalty would be appropriate, such as a six-month disqualification.
- Appellant has implemented a new POS system.
- Even-dollar transactions are because customers use all the benefits on their card.
- Many customers are elderly and do not have access to transportation.

In support of its contentions, Appellant provided the following documentation:

- 27 pages of documentation regarding undercover investigations.
- 5 pages from the store visit documentation.
- A two-page affidavit signed by the owner.
- A three-page bulk goods price list.
- ~153 store photos.
- ~109 pages of statements signed by customers.
- Three pages of photos of register receipts.
- A one-page receipt for a POS system.
- A 14-page summary of Appellant's payments to vendors.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

## **ANALYSIS AND FINDINGS**

Regarding Appellant's denial of violations, this review examines the relevant information regarding the determination. Once the ROD establishes trafficking occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

### **Store Characteristics**

In reaching a disqualification determination, the ROD considered information obtained during an April 26, 2019 store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the following store size, description, and characteristics:

- Store size is approximately 5,000 square feet with little to no area of food storage outside of public view;
- Available inventory of SNAP-eligible food items showed stock composed predominantly of inexpensive items, which is typical of a medium grocery store;
- Two cash registers and two electronic SNAP terminal devices;
- Two shopping carts and 20 hand baskets;
- Optical scanners and no conveyor belts;
- Asian-specialty goods;
- Well-stocked;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- No meat or seafood specials or bundles.

In addition, the store's checkout counter space area was small allowing little surface area to place large purchases and making it impractical to process more than one customer at a time.

There was no indication that SNAP households were inclined to visit the store regularly to purchase extremely large quantities of grocery items. The available food was primarily of a low-to moderate- dollar value. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

### **Same-Cents Transactions**

An interesting characteristic of questionable transactions is that many of them end in a same-cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

Attachment 1 to the charge letter documents transactions ending in same-cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values. This attachment includes 112 same-cents transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

There were a total of 665 SNAP transactions that met the parameters of this attachment. Of these transactions, a total of 121 (17%) ended in “00” cents. Same-cents values comprised ~43% of all these SNAP transactions conducted by the firm during the four-month review period. In other words, more than one out of every six of these transactions was an even-dollar transaction.

Appellant contends that even-dollar transactions are because customers use all the benefits on their card. There is no particular reason why the remaining benefits on a card would typically be for an even dollar amount. While there are times when SNAP participants - who do receive their benefits in even dollar amounts - spent **all** their benefits at Appellant in one transaction, such unusual behavior is even more suspicious. Transactions appearing in more than one attachment

to the charge letter are more suspicious as they display multiple patterns common to trafficking transactions. A number of households whose transactions were cited in other attachments to the charge letter also consistently made transactions that ended in same-cents values.

The prices evident in the store visit documentation show a pricing structure typical of medium grocery stores, where items are often priced to end in “.x9” cents. With such a pricing structure, it is unlikely for transactions to naturally end in even-dollar values with the frequency they occurred during the review period. Even if many of Appellant’s prices were for even-dollar amounts, the purchase of even a single additional item that was not priced at an even-dollar amount would rule out an even-dollar transaction.

Patterns of transactions ending in same-cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of Appellant’s declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As Appellant has offered no rational explanation for why such patterns might exist, it is reasonable to conclude that these same-cents transactions are the result of trafficking.

### **Repeat Transactions by the Same Household**

Attachment 2 to the charge letter documents the same household conducting back-to-back transactions in unusually short time frames. Violating stores may conduct multiple transactions from the same household account **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** to avoid the detection of single, high-dollar trafficking transactions. There are 26 repeat transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** included in this document.

Appellant contends many customers do all their shopping at Appellant, are elderly, and do not have access to transportation. The record reflects that customers conducting rapid, repetitive, and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

The Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant, including Asian-specialty supermarkets located .1 and .16 miles from Appellant and a superstore located .5 miles from Appellant. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of otherwise unavailable ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

### SNAP Household #3

This household made a transaction at a superstore 5 U.S.C. § 552 (b)(6) & (b)(7)(C) followed by a transaction at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later. The following month, this household made a transaction at a supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) followed by a transaction at Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later.

Appellant states that customers make SNAP transactions to share with others in their household. This is correct. Appellant also argues that the back-to-back transactions are due to customers splitting transactions to receive separate receipts for each or because customers like to pay for bulk items separately. A SNAP household is one that purchases and prepares meals together, so there would be no need to obtain a separate receipt. Households that purchase and prepare meals separately are considered separate households. Appellant has not provided any reason why a customer would choose to purchase certain bulk items separately from their other items.

Customers sometimes purchase a second round of items after they find out their balance after making the initial purchase. There are many ways for customers to find out the balance on their card, including checking their balance at Appellant. Such a balance check could be performed in seconds. It is unlikely that customers would instead choose to shop, purchase items, leave those items on the floor or carry them to a vehicle, before repeating the entire process again.

Appellant is correct that customers sometimes forget an item or see something at the checkout and decide to purchase it after already having completed a transaction. In such instances, it is reasonable to expect the subsequent purchase would be for a nominal amount. This is because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. Also, forgotten goods purchased immediately after a prior transaction typically consist of only one or two items. However, the subsequent transactions exceeded any minor amount. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction total.

While there are legitimate reasons why a SNAP recipient might return to a medium grocery store in a short period of time, the examples in Attachment 2 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a medium grocery store. Spending sizable portions of one's SNAP benefit allotment in a medium grocery store - when there are larger stores at which one also shops that carry more variety of foods at a lower cost - is unreasonable customer behavior. Moreover, households listed in this attachment conducted this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation and evidence for why these transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in a medium grocery store should be both rational and compelling. Appellant's explanation is neither.



## SNAP Benefit Depletions

Attachment 3 to the charge letter documents the same household exhausting all or nearly all its benefits in rapid order. There are 98 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** included in this document.

In some cases, SNAP customers depleted SNAP account balances to within pennies of a zero balance and/or depleted balances during the first week of the month. It is highly implausible that customers would desire, or be able, to regularly conduct large transactions that deplete balances to within pennies of a zero balance. The likelihood that these transactions were the result of the legitimate sale of only eligible foods only is extremely small.

A government report on SNAP shopping patterns<sup>1</sup> indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of one's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and supercenters, with only four percent of all households never shopping in a supermarket.

It is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a medium grocery store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a few transactions or a single day. Depleting a large portion of one's SNAP balance early in the benefit month, leaving little to purchase food for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

## Large Transactions

It is rare for a medium grocery store such as Appellant's to have purchases like those included in Attachment 4 to the charge letter. This attachment cites 164 EBT transactions during the four-month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

These transactions significantly exceed the county's average SNAP transaction, which was \$29.29 for this type of store during the four months of the review period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant's average transaction is significantly higher than the county's average transaction.

Its large transactions during the review period were also much more frequent than those of similar stores in the county. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

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<sup>1</sup> U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to the two nearby supermarkets that carried Asian-specialty goods. Appellant had more transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** than either of the supermarkets.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct large transactions closely resembling those typically found at a supermarket or superstore. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors discussed in this section, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **No Control Over Benefit Use**

Appellant insists that it has no control over how and when SNAP customers spend their benefits. In truth, SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use. Rather, they display characteristics not typically found at medium grocery stores and are indicative of trafficking.

### **Expensive Offerings**

Appellant asserts Appellant carries a large inventory of bulk goods and high-priced items, including seventeen types of bulk rice some of which cost \$42.99, coffee for \$55, sausage for \$149, fish for \$155, chicken wings for \$97 and mangos for \$170. The evidence does not support this contention.

During the April 26, 2019 store visit, none of these items (except rice) were on display as being available for bulk sale. In addition, while Appellant provided a price list for bulk goods, there were no posted prices for these items at the time of the store visit. The store clerk identified the four most expensive items at Appellant, which were then recorded and photographed by the store reviewer. With the exception of rice, none of the items Appellant now alleges it sells in bulk were identified by the store clerk. The store visit on April 26, 2019 identified the four most expensive items at Appellant as follows: Koko rice for \$44.99, Deepa shrimp for \$24.99, Musang king pulp for \$21.99, and fresh durian for \$10 per lb. This is consistent with the results of the March 16, 2017 store visit which identified the four most expensive items at Appellant as rice for \$34.99, Deepa shrimp for \$26.99, IQF raw shrimp for \$14.99, and fresh tilapia for \$10.81.

The store review report also documented that the firm did not have meat or seafood specials or bundles. With the exception of rice, the bulk items with posted prices featured in the pictures provided by Appellant were not present in the store at the time of the store visit. Appellant did not provide any receipts or invoices in support of its contentions. The receipts in the three photos provided by Appellant were outside of the review period. The 14-page summary of payments to vendors provided by Appellant does not include an itemized list of purchases.

While there may have been occasions when Appellant sold expensive items, based on the evidence from the store visits, and lack of corroborating receipts or invoices, it is more likely true than not true that the sale of expensive items does not explain the large SNAP transactions that occurred at Appellant. Trafficking is a more likely explanation for the unusual and irregular pattern of high-dollar transactions.

### **No Applicable Mitigating Factors**

This review is limited to considering the circumstances at the time the Retailer Operations Division's decision was made. It is not within this review's scope to consider actions that Appellant may have taken subsequent to this decision to begin to comply with program requirements. There is no provision in SNAP regulations for reducing an administrative penalty on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, Appellant's contention that it has improved its POS system does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Appellant asserts that this is the first time there has been an issue related to SNAP and that it did not receive prior warnings. A record of program participation with no documented previous violations, however, does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking. To require Appellant to receive a warning of violations before administrative action can be taken would render the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA virtually meaningless.

Appellant maintains a lesser penalty would be appropriate, such as a six-month disqualification. Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations 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 extremely serious, 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, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must 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.

## Customer Statements

With regard to customer statements provided by Appellant that purport to establish that questionable transactions were legitimate and no trafficking occurred, the truth of such statements cannot be verified. Customers engaging in trafficking transactions would be unlikely to admit to this behavior. On the contrary, customer statements would be expected to attest to the legitimacy of questionable transactions regardless of whether they were, in fact, legitimate.

## Evidence of Trafficking

Appellant argues there is no evidence or proof of trafficking. Appellant stated the determination was not based on an undercover investigation and two other investigations did not show trafficking. Appellant also contends using retailer data to charge owners with trafficking violates the law. As previously stated, 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.)

Government analyses of stores caught in trafficking violations during on-site investigations found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges. FNS employs a computerized fraud detection tool to identify these patterns. This tool does not determine that trafficking has occurred. The ROD must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROD conclude whether questionable transactions were, more likely than not, the result of trafficking. Nevertheless, transactions with these patterns sometimes have valid explanations that support the idea they were the result of legitimate purchases of eligible food items, which is why opportunities are given to charged retailers to explain the questionable transactions cited. In this case, based on the empirical data of past trafficking investigations, the number of suspicious patterns displayed, the other evidence in the file, and in the absence of any reasonable explanations for such transaction patterns, the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

## Summary

The ROD determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROD’s assessment that substantial evidence exists that the questionable transactions occurring during the review period displayed patterns inconsistent with

legitimate sales of eligible food to SNAP participants. The evidence the ROD considered in support of its determination included:

- The irregular SNAP transaction data of Appellant as compared to similar stores;
- Observations made during an store visit by a USDA contractor, including the inadequacy of the firm's staple food stock to support such large transactions;
- The availability of other SNAP-authorized stores located close to Appellant; and,
- Shopping behaviors of Appellant's customers.

The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROD's determination that Appellant most likely trafficked in SNAP benefits. The SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS must disqualify the firm permanently.

### **CIVIL MONEY PENALTY**

For a firm to have the opportunity to be considered for a civil money penalty (CMP), it must request that FNS consider a CMP in lieu of permanent disqualification and submit supporting documentation within ten days of receipt of the charge letter. Appellant was advised of these provisions in the charge letter of May 28, 2019. The regulations specify that such supporting documentation must demonstrate that the firm had established and implemented an effective SNAP compliance policy and training program prior to the occurrence of violations. A review of the administrative record indicates Appellant did not, at any time, request a CMP. Appellant also did not submit any documentation to support its eligibility for this alternative sanction, before or after the deadline.

In the absence of a request for a CMP and any supporting documentation, a CMP was not assessed by the ROD. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

### **CONCLUSION**

The record has yielded no indication of error in the finding by the Retailer Operations Division that Appellant trafficked in SNAP benefits. A review of the evidence supports that it is more likely true than not true that program violations occurred as charged. Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent

disqualification against Grocery Plus from participating as an authorized retailer in SNAP is sustained.

### **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 Appellant desires a judicial review, 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.

RICH PROULX  
ADMINISTRATIVE REVIEW OFFICER

August 27, 2019