

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch
Alexandria, VA 22302**

Higüeyano Mini Market,)	
)	
Appellant,)	
)	
v.)	Case Number: C0189637
)	
Retailer Operations Division,)	
)	
Respondent.)	
_____)	

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that there is sufficient evidence that a permanent disqualification of Higüeyano Mini Market from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not FNS’s Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against Higüeyano Mini Market.

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from October 2015 through March 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Higueyano Mini Market for SNAP participation as a small grocery store on January 25, 2013. In a letter dated June 15, 2016, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of October 2015 and March 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter dated June 28, 2016, the Appellant replied to the charges, generally stating that the firm was not engaged in trafficking and that the store was a vital part of the low income community in which it is located. The Appellant argued that many local residents cannot travel to a supermarket as often as needed, so they visit Higueyano Mini Market to purchase most of their daily necessities, sometimes as often as three times per day.

The Appellant further argued that if the transactions in the charge letter seem unusually high, it is because the price of merchandise in a small store is more than one would find in a supermarket. The Appellant stated that an example of a large transaction is as follows:

- Two pounds of ham for \$10.00
 - Two pounds of American cheese for \$10.00
 - Bacon for \$7.00
 - One dozen eggs for \$3.50
 - One gallon of milk for \$5.00
 - Orange juice for \$4.00
 - One box of cereal for \$6.00
 - One loaf of bread for \$2.50
 - Coffee for \$4.00
- Total = \$52.00

The Appellant argued that this type of transaction would only be for breakfast, and that sometimes a customer would come back to the store soon afterward to purchase more items for lunch and any other needs that they have. The Appellant insisted that the store was fully stocked with a variety of products and that if the trafficking charges were upheld, the store would likely have to close.

In support of these contentions, the Appellant supplied the Retailer Operations Division with a letter of support from a SNAP customer and a petition bearing the signatures of 32 customers who stated that they would be greatly harmed if Higueyano Mini Market were to be disqualified. It is noted that the Appellant also stated that with its response, it was enclosing a price list of some of the items in the store. However, it does not appear that any kind price list was submitted to the Retailer Operations Division.

After considering the Appellant's response and after reviewing the documentation in the case, the Retailer Operations Division determined that the Appellant's explanations were not

sufficient to justify the unusual transaction patterns listed in the charge letter attachments. As a result, the Retailer Operations Division concluded that trafficking had occurred as described in the charge letter and issued a determination letter dated July 18, 2016. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked July 25, 2016, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(c) states, *inter alia*:

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(a) states, *inter alia*:

*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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]*

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *inter alia*:

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

7 CFR § 271.2 states, *inter alia*:

Eligible foods means: 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)(1) states, *inter alia*:

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(b)(2)(ii) states, *inter alia*:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence ... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

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.

7 CFR § 278.6(i) states, *inter alia*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

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

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

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

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...

APPELLANT'S CONTENTIONS

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

- Appellant understands that FNS believes that the store traffics in SNAP benefits due to the volume it sells. However, the firm has always been an honest business and has always done business the right and legal way. The firm has always been up to date on licenses, inspections, and any other requirements.
- Appellant has read over and thoroughly discussed the SNAP regulations with the employees to ensure that all laws are followed.
- The location of the business is important to the neighborhood because it is convenient for households to get all of their food items. Statistically, the surrounding neighborhoods are composed of low income residents with a lot of dependency on government programs. According to studies conducted, it is one of the toughest neighborhoods in which most citizens are of very low incomes and rely greatly on services such as Section 8 Housing, SNAP, WIC, and other programs to combat daily living.
- The firm provides a large range of foods, from fruits and vegetables to meats to canned products.

- The firm provides the best customer service to attract a loyal clientele. Many residents benefit from having the store in the neighborhood.
- The Appellant goes above and beyond to find the best prices and deals for its customers. For example, it purchases cases of water, large bags of rice, cereal (three for \$10), etc. This draws customers to the store more than other stores.
- All large transactions listed in the charge letter were honest purchases. With transactions occurring right after the holidays, the firm had customers buying large amounts of food for social gatherings or snacks for school.
- The firm also has elderly customers and the store makes it easy for them to get all of their food products.
- The firm is also a WIC-authorized store. Even before its WIC authorization, it sold a large amount of Similac, which is expensive. The Appellant has seen customers purchase up to five cans of Similac with SNAP benefits in a single purchase.
- Regarding multiple transactions in a short period of time, the Appellant had an assistant help at the cash register. The owner and the assistant would split the transactions. The assistant would ring one part of the purchase on a separate calculator and the owner would ring up the remaining purchases. These would then be transacted on the point-of-sale machine separately. So some of the purchases belong to one person even if it was rung up twice. Appellant is not able to pull up a camera recording of this evidence because the camera system saves data for only 21 days.
- The firm's sales have dramatically decreased without SNAP.
- The store has offered deals to customers, such as brand name cereal at two for \$7.00 or three for \$10.00.
- The firm often provides catering services, such as party trays, for nearby organizations, such as a local church, school, and community center. Most of these catering services are paid for with SNAP benefits from one of the members.
- Appellant would like FNS to consider that the disqualification impacts the entire community as well as the business.

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

- Two photographs of SNAP signage at the store:
 - Form FNS 110 "Using SNAP benefits," describing what can and cannot be purchased with SNAP benefits.
 - A sign made by the Appellant entitled, "We Do Not Negotiate Food Stamps," which repeats some of language from Form FNS 110.
- Twelve photographs depicting the store's shelves and merchandise.
- A hand-written letter from a customer that has suffered "severe hardship" as a result of the firm's SNAP disqualification.
- Two photos of inventory receipts from Byun Brothers Sales, Inc., one dated July 1, 2016, which is well after the review period. The date on the second receipt was not visible, nor was the total amount visible on either receipt. The second receipt highlighted the purchase of 36 containers of Similac.
- A link to a website showing the demographics of zip code 19140 in Philadelphia.
- A printout of a portion of a web page from the Coalition Against Hunger, which states that over a quarter of Philadelphia's residents receive SNAP benefits.

It should be noted that in an August 18, 2016 e-mail from the Appellant to the Administrative Review Officer, the Appellant stated that it attached “copies of purchases made throughout the years from vendors and wholesale.” But the only inventory receipts received by the review officer were the two from Byun Brothers Sales, Inc., as noted above.

The e-mail also stated that a short video was attached to the e-mail, and that the video showed the “constant flow of people coming in and out of the store.” However, this video was not attached to the e-mail. The review officer contacted the Appellant to report that the video had not been received. The Appellant responded by stating that it would try sending the video again, but the review officer never received another e-mail with such an attachment.

Finally, the Appellant’s e-mail said that the head of the church next door to the store would be sending a letter testifying that the church constantly uses the store for big events. But as of the date of this decision, no such letter has been received by the review officer.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and questionable transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm’s EBT transactions, but also information obtained from an April 19, 2016 store visit which was conducted by an FNS contractor to observe the nature and scope of the firm’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 and photographs documented the following store size, description, and characteristics:

- Higueyano Mini Market is a small grocery store, roughly 500 square feet in size, operating in an urban residential area of Philadelphia, Pennsylvania.
- At the time of the visit, the firm had no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash register and one EBT point-of-sale (POS) device. The store does not appear to use optical scanners to process transactions.
- The store’s staple food stock is moderate in each of the four staple food categories. The store also stocks SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as tobacco products and miscellaneous household merchandise. The store also sells ineligible hot food, such as pastelitos, as well as cold

made-to-order sandwiches, including ham and cheese, turkey, chicken, bologna, salami, and tuna. Prices for the sandwiches and hoagies range from \$2.75 for a turkey sandwich to \$4.75 for a large honey BBQ chicken hoagie.

- Meat and cheese is also available for purchase by the pound, ranging in price from \$3.69 for a pound of bologna to \$6.99 for a pound of buffalo chicken. Cheese is priced from \$4.99 to \$5.99 per pound.
- The checkout area consists of a very small cluttered countertop (approximately 12 inches by 12 inches) where items can be placed to be rung up. The cramped checkout area is not suitable for conducting large or rapid transactions as there is no conveyor belt to expedite the purchase and not enough space to place more than two or three items. The cash register is located behind a window.
- 7 USC 2018 (b)(7)(e)

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a small grocery store. There was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available food was primarily of a low dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk items. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. 7 USC 2018 (b)(7)(e):

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e).

It is possible that there is a legitimate explanation for such repetitiveness, but unfortunately the Appellant has offered no specific arguments to counter these unusual patterns.

In its original response to the charges, the Appellant gave a sample transaction with the following information:

- Two pounds of ham for \$10.00
- Two pounds of American cheese for \$10.00
- Bacon for \$7.00
- One dozen eggs for \$3.50
- One gallon of milk for \$5.00
- Orange juice for \$4.00
- One box of cereal for \$6.00
- One loaf of bread for \$2.50
- Coffee for \$4.00

Total = \$52.00

However, records show that there was only one transaction for \$52.00 in the entire six month review period. Therefore, the above sample was very likely not an actual transaction. Without any documentation or evidence to rebut the Retailer Operations Division's position and considering that the firm does not seem to employ a special pricing structure, it is reasonable to conclude that the transactions cited in Attachment 1 are more likely than not the result of trafficking.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. [7 USC 2018 (b)(7)(e)]:

[7 USC 2018 (b)(7)(e)]

The transactions cited in Attachment 2 are noteworthy because they are highly irregular and stand out significantly from normal shopping patterns at moderately-stocked small grocery stores such as Higueyano Mini Market. The contractor's photographs show a very small store with primarily low-priced items. [7 USC 2018 (b)(7)(e)].

It should be noted that according to FNS records, there are currently 79 SNAP-authorized retail stores within one mile of Higueyano Mini Market, including two superstores, four supermarkets, a large grocery store, four medium grocery stores and 68 small grocery stores.

[7 USC 2018 (b)(7)(e)].

As to why the unusual patterns found in Attachment 2 might exist, the Appellant has argued that it is common for local residents to shop at the store multiple times a day. It explained that a household might visit the market to pick up items for breakfast and then return a short time later to obtain items for lunch.

Unfortunately, the Appellant has offered no evidence whatsoever of this practice. It submitted no cash register receipts to verify what was actually purchased during the SNAP transactions. Assertions 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.

The Appellant has also argued that multiple transactions in a short period of time are due to an assistant helping out at the cash register. According to the Appellant, the owner and the assistant would split the transactions. The assistant would ring up one portion of the purchase on a separate calculator and the owner would ring up the remaining portions on the cash register. The two portions would then be separately transacted on the point-of-sale machine. As a result, some of the purchases would show up as two transactions even though they belonged to just one person. This system was apparently employed to speed up the process at the checkout area in order to avoid long lines. The Appellant acknowledged, however, that evidence of this system is not available because the video camera in the store only saves data for 21 days.

Unfortunately, this contention makes very little sense in relation to the actual transactions cited in Attachment 2. The vast majority of the transactions in this attachment were more than

two hours apart. They are not rapid transactions occurring within moments of one another. Instead it appears that the customer would make a single large purchase and then return several hours later for another large purchase. The unanswered question is why would households repeatedly return to the store for relatively large purchases when a supermarket or superstore is so close in proximity? Such behavior is not typical of SNAP households.

[7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e)].

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, smaller transactions to avoid detection, a firm's explanation for why these large, repetitive SNAP transactions from individual accounts are occurring in a very small grocery store should be both rational and compelling. The Appellant's contentions in this regard are neither.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. [7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e)].

[7 USC 2018 (b)(7)(e)].

The Appellant has argued that all large transactions listed in the charge letter were honest purchases. It states that many transactions occurred around the holidays, resulting in customers buying large amounts of food for social gatherings or snacks for school. The Appellant also states that the firm has elderly customers and the store makes it easy for them to get all of their food products. The firm also provides catering services, such as party trays, for nearby organizations, such as a local church, school, and community center. The Appellant contends that most of these catering services are paid for with SNAP benefits from one of the members.

The Appellant further contends that the firm is a WIC-authorized store and sells large amounts of expensive baby formula. It claims that even before the store became WIC authorized, it sold a lot of baby formula to customers using SNAP benefits. In support of this claim, the Appellant submitted a photo of an inventory receipt showing the purchase of 36 containers of baby formula. The date of the receipt is not visible in the photo. The Appellant also submitted 12 undated photographs of the store's shelves and merchandise in an apparent effort to demonstrate that the firm's inventory can easily support the large transactions that were made during the review period.

With regard to these contentions, it should be noted that the SNAP transactions cited in the charge letter are questionable not because they exceed any limits for use, but rather because they display patterns of use that are inconsistent with the store's documented physical characteristics, pricing policy, and food inventory. Had these large transactions occurred on an occasional or intermittent basis, they possibly would have been dismissed as unusual, but not so repetitive as to conclude that trafficking was occurring. But the transaction patterns cited in Attachment 3 are suspicious because they stand out significantly in comparison to other stores of similar size and characteristics.

It is further important to note that Appellant offered no evidence to show how much of its inventory went to SNAP purchases, and provided no evidence, such as cash register receipts, to show what households actually purchased. Undated inventory records or records outside of the review period, undated photographs, and verbal or written assertions by the Appellant are not sufficient to prove that the individual transactions cited in the charge letter were for legitimate purchases of eligible food. This review does not doubt that many authentic SNAP transactions took place during the review period. But there are a large number of transactions and patterns that have not been adequately explained by the Appellant. Such transactions are strongly indicative of trafficking.

In reviewing the contractor's store visit report, it is difficult to comprehend what would lure a household to spend large amounts of SNAP benefits in a very small store with no shopping carts or shopping baskets rather than going to a nearby supermarket or superstore where prices are likely lower, where inventory is significantly larger, and where shopping carts and baskets would help facilitate the purchase of large numbers of items. As mentioned earlier, agency records show that there are nearly 80 SNAP-authorized retail stores of equal or greater size within one mile of the Appellant firm, including two superstores and four supermarkets.

It is worthwhile to restate here that in an appeal of adverse action an appellant bears the burden of demonstrating that the administrative actions should be reversed. In a case such as this one, which is based on an analysis of transaction data, an Appellant must prove, through a preponderance of evidence, that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to that which is provided by the Retailer Operations Division, the determination made by the Retailer Operations Division must be sustained.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that Higueyano Mini Market, with its primarily low-dollar inventory, lack of shopping carts and baskets, and its severely constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 3. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has satisfactorily demonstrated that Higueyano Mini Market likely trafficked in SNAP benefits. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place

at the firm during the review period. Conversely, the Appellant has failed to provide a rational, evidence-based explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Hardship to Appellant and SNAP Recipients

More than any other contention, the Appellant has argued that a permanent disqualification of Higueyano Mini Market would cause hardship to not only the firm itself, but to the customers who use SNAP benefits at the store. The Appellant has provided evidence to show that the firm is located in an economically depressed area of Philadelphia, Pennsylvania. It has also provided multiple letters from SNAP recipients and a petition signed by 32 customers. All of these documents suggest that the local residents will experience hardship if the firm is disqualified. The Appellant further states that it goes out of its way to provide excellent customer service to its clientele and that it makes a significant effort to offer special deals to its customers. These actions have created a loyal customer base which will be greatly harmed if the firm is disqualified. Finally, the Appellant has stated that its sales have decreased dramatically since the disqualification has taken effect.

With regard to the contention that the community will be adversely affected if the store is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its SNAP benefits elsewhere. However, as noted earlier, agency records reflect nearly 80 comparable or larger SNAP-authorized stores located within one mile of the Appellant firm, including two superstores and four supermarkets.

Agency records also show that the vast majority of SNAP recipients who shop at Higueyano Mini Market also shop at other local stores, including supermarkets and superstores, which suggests that transportation concerns are not as significant an issue as the Appellant implies. For example, the SNAP recipient who submitted to the Retailer Operations Division a letter of support was found to have spent more money at superstores and supermarkets than at the Appellant firm in four of the six months during the review period. Agency records also show that this customer occasionally shopped at a superstore mere minutes before or after shopping at Higueyano Mini Market.

This same recipient, who stated that she was handicapped and was not able to walk around a supermarket, had five transactions between \$52.00 and \$78.00 at the Appellant store during the review period. This review does not understand how it is easier for this disabled customer to transport large amounts of groceries around Higueyano Mini Market without the use of a shopping cart or basket and then transport those same items to her home than it is to walk around a supermarket, which records prove she regularly does.

Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are also clear that a civil money penalty for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

With regard to the contention that a permanent disqualification decision would cause the Appellant to suffer financially, including possible closure of the store, Federal statute at

7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. When a firm fails to meet the criteria for a CMP in lieu of permanent disqualification, FNS is afforded no latitude in imposing penalties for trafficking. Further, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the Appellant or firm would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying with regulation at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider the sanction of a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes as required by the regulation. As best as can be determined, the Appellant did not request consideration of a CMP within required timeframes, nor did it submit any documentation to support its eligibility for such a sanction. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

CONCLUSION

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

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as determined by the Retailer Operations Division. Based on the analysis above, the decision to impose a permanent disqualification against the Appellant, Higueyano Mini Market, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a

complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

JON YORGASON
ADMINISTRATIVE ER

January 5, 2017
DATE