

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

Home Plate Food Corp,

Appellant,

v.

Case Number: C0203099

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 to support a finding that the permanent disqualification of Home Plate Food Corp. (Home Plate Food or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated October 24, 2017, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2017 through September 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that 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 replied to the charges by fax on November 6, 2017. Appellant denied trafficking and explained the transactions were largely due to Appellant's practice of extending credit to SNAP households and allowing repayment to be made with SNAP benefits. Appellant also provided purchase invoices, store photographs, and documentation of the credit accounts.

After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated December 18, 2017. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated December 27, 2017, ownership appealed the Retailer Operations Division's determination and requested an administrative review. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means the 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) 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 § 271.2 states, in part, that, "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 § 271.2 defines trafficking as: "(1) 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 § 278.6(a) states, inter alia, that "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence

obtained through a transaction report under an **electronic benefit transfer system, . . .**”
(emphasis added)

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(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.”

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.”

SUMMARY OF THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from April 2017 through September 2017. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made too rapidly to be credible.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- There were excessively large purchase transactions made from recipient accounts.

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.

APPELLANT’S CONTENTIONS

In its December 27, 2017, administrative review request, Appellant provided the following summarized contentions, in relevant part:

- Appellant offers a large variety of grocery items, deli, and produce.
- Participants can easily spend their benefits at Appellant.
- Appellant sells eggs, bread, cold cuts, milk, fruit, and vegetables for daily consumption.
- Many families share their SNAP benefits and track these purchases separately.
- If the store is busy, a calculator is used to add up totals before purchase.

- Many families like to conduct separate transactions.
- A customer will make a personal purchase and then charge the items for another family member separately so they can get a separate invoice.
- Appellant has allowed a select few to have their basic needs filled on credit and they repay the business when they receive their benefits.
- At no time was ownership aware that accepting this type of payment was against the rules.
- Appellant previously sent in letters from customers who received instore credit and matching receipts showing the payments made.
- Ownership previously sent in the receipts of purchases and photographs of the different types of products available.
- Appellant's redemptions have increased because there are few businesses in the area that are redeeming SNAP benefits either due to the business having closed or in the process of changing ownership.
- Appellant has been in business for almost six years without any issues.
- Appellant has always been a rule abiding business and has always observed the rules and regulations of the SNAP.

The preceding may represent only a brief summary of the Appellant's contentions presented 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.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Home Plate Food as a medium grocery on August 2, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 2, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Home Plate Food is approximately 1400 square feet, with no additional food storage outside of public view.
- There were three shopping baskets but no shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no scanner for the quick processing of transactions.
- The check-out counter space was small and surrounded by a Plexiglas display with an ice cream cooler in front.
- There were no meat/seafood specials or bundles that might sell for high prices.
- There was no fresh meat, poultry, or fish.
- There was a deli counter which offered deli meats, cheese, and fresh produce.
- There was a menu displayed above the deli counter.

- There was a selection of fresh produce with limited quantities including apples, plums, lettuce, peppers, tomatoes, bananas, mangoes, potatoes, squash, onions, and avocados.
- Dairy included milk, yogurt, cheese, butter, ice cream, and infant formula.
- Other staple foods available for purchase were eggs, juice, cereal, rice, pasta, and a large selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included as alcohol, health and beauty items, paper goods, cleaning products, and tobacco products.
- There is no indication from the store visit report that the firm has a special pricing structure; however, most items appeared to end in 9, such as \$2.89, \$4.29, \$4.99, etc.

The four highest priced items eligible for EBT purchase are infant formula (\$19.99), canned milk (\$17.99), cooking oil (\$11.99), and 20 pound bags of rice (\$11.99). Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors.

Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. There were an unusual number of transactions ending in a same cents value. During the review period, there were 57 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits.

The photographs from the store visit shows the firm's pricing structure with the majority of items ending in a 9 cent value. The store's inventory contains almost exclusively inexpensive food items and accessory foods with the exception of infant formula. It is possible that some of the smaller transactions are the result of purchasing one same cent item and this could explain some of the lower dollar same cent transactions. The larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these purchases would routinely total to an amount ending in same cents. SNAP transactions consisting of multiple products are more likely to result in a random statistical spread of ending cent ranges **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

The Retailer Operations Division also found that there were several transaction amounts that were repeated. Such repetitiveness is frequently a sign that a firm is attempting to mask trafficking by avoiding even-dollar amounts that might appear suspicious. These repetitive

transactions are particularly unusual because the store does not sell large or bulk specialty items or specially-priced bundles of food or have a specific pricing structure. That transaction totals would so frequently and randomly land on a particular sequence of cents is extremely unlikely.

5 U.S.C. § 552 (b)(7)(E)

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

Charge Letter Attachment 2. Multiple purchase transactions were made too rapidly to be credible. This attachment lists 18 sets of transactions that meet the parameters of this scan. Appellant was rapidly processing consecutive SNAP transactions many of which were high dollar transactions. The steps required to process a legitimate SNAP purchase include the following:

1. unloading items from a cart or basket however Appellant had neither;
2. separating eligible items and ineligible items;
3. handling by the cashier of individual items and scanning items or manually entering price;
4. bagging the items for carry out;
5. handing the customer bagged items to make room for more food items the customer is bringing to the counter;
6. informing the customer of the total;
7. pressing the “SNAP transaction key” on the point-of-sale device;
8. swiping the card;
9. entering by the customer of the required PIN;
10. cashier entry of the purchase amount;
11. confirming customer has a sufficient benefit balance;
12. processing and approval of the transaction by the system;
13. printing out register and EBT receipts;
14. accepting an alternate form of payment for nonfood items and possibly handling cash change; and
15. removing products from the checkout area so the next customer in line can begin another transaction.

While such transactions may be conducted in succession, performing these actions on large transactions cannot be done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. Appellant processed orders considerably faster than supermarkets typically process them, yet it has only one small checkout counter and none of the logistical tools (such as conveyor belts, rotating bagging platforms or order separators) that are routinely used in rapid operations.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant explains that clerks often use a calculator to add up the merchandise of customers waiting in line so that they can immediately process transactions one after another. This

explanation, however, seems unlikely. In most cases, the first transaction in the set was very small, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such transactions would almost certainly be processed very quickly. The need for a calculator to speed up the next person in line seems unnecessary. In addition, there does not appear to be enough room at Appellant's checkout area to process multiple customers.

Appellant did not provide any compelling justification or evidence that all the irregular transactions cited in Charge Letter Attachment 2 were for eligible food items only. It is more likely true than not true that these patterns are a result of the firm trafficking in SNAP benefits.

Charge Letter Attachment 3. Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 28 sets of transactions conducted by 17 different households that met the parameters of this scan. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no legitimate explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. The second and third transactions in each set are too large to consist of a forgotten item or two.

Appellant has offered no evidence that SNAP households share their cards with other household members, relatives, or friends, as it contends. Appellant has also not provided any explanation for why, if such behavior was occurring, these purchases would occur at Appellant rather than at nearby, larger stores. It is unlikely that a family relying on SNAP to supplement their nutritional needs would share these benefits with another family that purchases and prepares meals separately.

Appellant informed the Retailer Operations Division that many of these transactions were due to repayments on credit accounts. When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. Appellant submitted documentation to support a limited number of credit repayments. However, most of the SNAP transactions listed are still questionable. It is not clear why one household would have to return to the store multiple times a day to pay off a credit account.

Appellant also asserts that its SNAP redemptions have increased because many other businesses have closed or lost their authorization to process SNAP transactions. A review of

client shopping data for the review period shows that clients shopping at Home Plate Food are also shopping at other area groceries, as well as supermarkets and super stores that offer the customers a much larger quantity and variety of eligible food items for better prices than the customers can find at Appellant. Based on these shopping patterns, transportation to other stores is not an issue for these customers. Yet, these customers continue to shop and spend high dollar amounts in short time frames at Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better-stocked stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Charge Letter Attachment 4. The majority or all of individual recipient benefits were exhausted in unusually short periods of time. The charge letter attachment lists 18 transaction sets conducted by 14 different SNAP households. 5 U.S.C. § 552 (b)(7)(E). SNAP recipients do not normally exhaust their benefits in multiple transactions on the same day.

A government report on SNAP shopping patterns¹ indicates that on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefit. By the first week, the average household had redeemed over half of its benefit, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance. Therefore, transactions in which SNAP benefits are exhausted in one or a few transactions during a short period of time are suggestive of trafficking.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. This attachment lists 129 transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's inventory. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions.

The four most expensive items in SNAP/EBT are infant formula (\$19.99), canned milk (\$17.99), gallon of cooking oil (\$11.99), and 20 pounds bag of rice (\$11.99). Formula is not frequently purchased by SNAP customers, as SNAP households that contain infants are almost always eligible for participation in the WIC program, and infant formula is part of the WIC food package. Appellant is a WIC authorized vendor. It is unlikely that these transactions are due to the items listed.

Given that the Appellant firm does have a moderate inventory of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an

¹ Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.

occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there are almost certainly some legitimate SNAP transactions listed among the transactions listed in Attachment 5. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the lack of high-priced food items and the absence of specially-priced meat bundles, large or expensive packages, or ethnic foods. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

As with Attachment 3, Appellant contends that most of the large transactions are the result of the firm allowing a few of its SNAP customers to shop on credit and then pay the store back when the household's benefit allotment is replenished. As indicated previously, credit transactions must be accounted for with substantive evidence such as to the dates credit was extended, to whom, for what amount, and for what items. Although the evidence submitted supports that Appellant may be extending credit to four SNAP households; the evidence does not support that **each** of these large SNAP transactions are for the repayment of credit accounts. Thus, the Retailer Operations Division properly determined that the evidence submitted by the Appellant was insufficient to justify the irregular transactions cited in Charge Letter Attachment 5. Credit accounts will be addressed in more fully in the next section.

Sometimes a firm may have higher than average SNAP transactions amounts due to the lack of access to other SNAP authorized stores. However, the Retailer Operations Division determined that there are 28 larger stores within a one-mile radius of Appellant, including large groceries, supermarkets, or super stores. It is not plausible that the firm's customers would regularly purchase large amounts of merchandise at Appellant when larger, better stocked stores are readily available and in the vicinity of the Appellant firm.

Lastly, the Retailer Operations Division analyzed the shopping patterns of four households that conducted transactions listed on the charger letter attachments. All of these households had access to, and shopped at supermarkets and super stores. However, despite this access to better stocked stores, all of the sampled households conducted excessively large transactions at Home Plate Food within 5 U.S.C. § 552 (b)(6) & (b)(7)(C) hours of shopping at a supermarket or super store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unlikely that a medium grocery, with no shopping carts would have legitimate SNAP transactions comparable to supermarkets or super stores which have a superior breadth and depth of stock at likely better prices.

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. Therefore, based on this empirical data, and in the absence of evidence to legitimize such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation.

Credit Accounts

Appellant provided statements from four customers that allegedly purchased items on credit and made repayments with SNAP benefits. Appellant provided the name of the household, a photocopy of the EBT card, the household's identification number, a list of the items purchased on credit, the date of the purchase, and the date of the repayment of the credit account. The Retailer Operations Division conducted an analysis of the transaction history of each household and compared it to the submitted documentation. The Retailer Operations Division determined that the some of the transaction conducted by these households are likely to have been repayments on credit accounts. However, the majority of the SNAP transactions remain questionable.

There are 168 different SNAP households that conducted the 303 transactions listed in the charge letter attachments. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant states that it extended credit to a limited number of households. While these 22 transactions conducted by four households have been proven to be payment on credit accounts, the remaining 281 transactions are still questionable and cannot be explained as credit repayments.

Invoice Analysis

Appellant submitted invoices for the eligible food items it purchased during the review period to support its SNAP redemptions. The Retailer Operations Division conducted an analysis of the invoices for April through June 2017. Invoices or print-outs that did not list the items purchased were excluded. Appellant is a WIC authorized vendor and consideration was given to its WIC redemptions during the review period. The Retailer Operations Division determined that the submitted invoices did not support the firm's SNAP and WIC redemptions during the review period. Consideration also has to be given to cash and credit card sales.

The large dollar transactions remain questionable even if there was sufficient food inventory to support such transactions when consideration is made of there being no fresh unprocessed meat, a large inventory of low-dollar value food and beverage items, a greater variety of food at other stores which many customers also shop, and little counter space to place food for purchase for checkout. There does not appear to be anything that would reasonably attract SNAP households to shop at Appellant and spend substantial amounts of their SNAP benefits.

No Previous Violations

Appellant contends that it has not had any previous SNAP violations. A record of participation in the 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 the violations upon which they are based. There is no provision in the Act or regulations that reverses or reduces a sanction based upon a lack of prior violations by a firm and its owners, managers and/or employees.

Denies Trafficking

Appellant denies trafficking. Assertions that the firm has not violated program rules, by themselves and without sufficient supporting evidence do not constitute valid grounds for dismissal of the current charges of violations or mitigate their impact. Appellant must provide 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 order for the administrative action to be reversed. Appellant did not provide any compelling justifications for the transactions listed on the charge letter attachments. In the absence of compelling information or documentation, the evidence weighs in favor of the Retailer Operations Division's determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR § 278.6(i). Appellant was informed that it would need to provide both the request and supporting evidence within ten calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence. Appellant did not request a trafficking CMP in lieu of a permanent disqualification. However, Appellant submitted two pages of documentation titled Mandatory SNAP Meetings led by the store owner signed on February 7, 2017, and July 14, 2017.

The criteria for a trafficking civil money penalty in lieu of disqualification is established under 7 CFR § 278.6(i) which reads, inter alia:

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

of the following criteria:

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

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

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

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

was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm . . .”

The Retailer Operations Division determined that the documentation submitted by Appellant was not substantial evidence that Appellant met all four criteria required by 7 CFR § 278.6(i). For example:

- There is no documentation of any of Appellant’s employees’ dates of employment.
- There is no contemporary documentary evidence that all employees were provided SNAP compliance training on their initial hire date.
- There is no indication that quizzes or tests were conducted to insure that the employees understood any training that was provided to them.

In fact, Appellant’s claim that it held these training meetings is rather suspicious. If the firm was conducting regular training sessions and was, in fact, frequently reviewing SNAP rules and regulations, it would have almost certainly discovered that offering credit accounts to SNAP customers was strictly prohibited and that any firm engaging in such behavior would be subject to disqualification. This leads this review to believe that the training sessions were not likely taking place as Appellant claims.

In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the Retailer Operations Division. The record is clear that Appellant did not submit sufficient evidence to establish that Appellant had an effective compliance program and policy in effect prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP is also sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. 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's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

Mary Kate Karagiorgos
Administrative Review Officer

April 24, 2018