

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

Idrees Deli on the Bay Corp,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0198633

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 Idrees Deli on the Bay Corp. (Idrees Deli 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 May 4, 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 September 2016 through February 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).

In response to the charge letter, on June 2, 2017, Appellant, through counsel, requested documents under the Freedom of Information Act (FOIA). The FOIA Office responded to the FOIA on July 10, 2017. Counsel appealed the FOIA response by letter dated October 10, 2017. The FOIA office issued its response to the appeal on September 14, 2020. On September 16, 2020, the Retailer Operations Division provided counsel with ten days to provide its final response to the charges. On September 28, 2020, counsel provided information in support of its administrative review request. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store.

After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated January 27, 2021. 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 February 4, 2021, Appellant, through counsel, 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 preponderance of the evidence, that the administrative action 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) 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 USC § 2021(b)(3)(B) states, in part:

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

7 CFR § 271.2 states, 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, in part, as:

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

7 CFR § 278.6(a) states:

FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system**, . . .” (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 September 2016 through February 2017. This involved the following SNAP transaction patterns which is indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- The majority or all of the individual recipient benefits were exhausted in unusually short period 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 February 5, 2021, administrative review request, and subsequent correspondence submitted on March 9, 2021, Appellant, through counsel, provided the following summarized contentions, in relevant part:

- Appellant stocks the majority of a SNAP household's preferred needs and has sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.
- The store visit report showed that the store was exceptionally well stocked.
- The decision to be made is did the evidence show that the store was trafficking or did the ALERT system incorrectly flag transactions as a result of a difference in business operations.
- Counsel refers to previous administrative reviews that have been reversed.
- 7 USC 2023(a)((3)-(5) and 7 CFR 278.5 are silent on the burden of proof.
- Four households demonstrate a continuous pattern of conducting multiple trips **5 U.S.C. § 552 (b)(7)(E)** on or near same days each month that can likely be explained by either co-shopping or a forgotten item.
- The store takes telephone orders that are pre-tabulated and the customer comes to the store and pays for those items and then pick up additional times that they forgot or impulsively decide to purchase.
- Many of the customers are homeless and mentally ill making their purchase habits erratic and inconsistent.
- There is a homeless shelter nearby where homeless purchase convenience meals to take back to the shelter to consume.
- Co-shopping is on the rise, where both adults are responsible for the groceries.
- Different households will shop separately using the same account to pick up different needs.
- Different participants will travel to the store together to make purchases and then separate their purchases to track what each party has used from the benefit account.
- Appellant's inventory is sufficient to account for the transactions.
- The inventory includes Boar's Head products which are not commonly available at convenience stores and are more expensive.
- Appellant's convenience is another important factor to consider when evaluating repeat behavior.

- Customers are more likely to return for quick shopping trips than an average convenience store with an inferior inventory and a further distance from their homes.
- Transportation inconsistency is another reason why the store's transactions appear the way they do if the transportation to another store it is not dependable.
- The inventory offered by the store is of such variety that it's reasonable to assume that a household could satisfy all of their needs on a single shopping trip.
- The households conducting the large transactions likely have a larger amount of SNAP household members.
- It is not for the SNAP retailer to question why the households spend their money the way they do, but instead to make certain that the purchases are made for eligible items.
- Acceptable documentation for large transactions in other administrative review decisions have included sufficient inventory to account for transactions; sales documentation to support sales of food items; large families shopping contemporaneously; presence of high dollar foods; specialty or imported foods which are expensive and not generally available; stores that are miscategorized; sale of large quantities of soda; absence of large SNAP retailers; presence of a large local SNAP populations; bulk pricing; or a reward system for purchases.
- It is common for customers to spend large amounts as a direct result of the lack of nearby alternative stores that offer sufficient inventory, discounted prices, and convenience.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- Other nearby stores do not have the inventory variety that Appellant does and therefore Appellant will have larger SNAP transactions than the average for convenience stores.
- The transactions are supported by substantial inventory and can be reasonably explained by co-shopping, the store's pricing structure, and reliance on the store as the primary grocery.
- The only other stores nearby do not have the inventory variety like Appellant.
- Most of the grocers in the geographical area are likely to have the same number of similar transactions.
- Legitimate transactions have been misidentified as a result of an errant assumption about the store's inventory and clientele.
- Appellant requests a CMP and relies on the firm's compliance history since it became authorized as evidence of its effective compliance policy and program.

In support of its contentions, counsel submitted the following documents:

- Eight Customer Affidavits;
- Receipts and invoices;
- Thirty-seven photographs of stock;
- Know your Core, Protect Your Core, Convenience Store News for the Single Store Owner April 2016;
- U.S Grocery Shopping Trends, 2016 by Food Marketing Institute;
- United States' Census Bureau Brooklyn borough, Kings County, New York Community Facts;
- Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program in Fiscal Year 2017 Final Report by Insight Policy Research issued in September 2020; and

- Food Typically Purchased by Supplemental Nutrition Assistance Program Households by USDA, Food and nutrition Service, Office of Policy Support November 2016;

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 Idrees Deli as a convenience store on July 14, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a March 6, 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:

- Appellant is approximately 600 square feet.
- There were no shopping baskets or shopping carts for customer use.
- There was on cash register and one point of sale (POS) device.
- The counter checkout space was small and limited.
- There were no meat bundles, seafood specials, or fruits/vegetables in boxes.
- There was no fresh unprocessed meat, poultry, or fish.
- There were some packages hot dogs and bacon.
- There were several different blocks of cheese in the deli case
- There was limited fresh produce including some bags on onions, three apples, and one pear. There were tomatoes and lettuce in the deli case and were likely used for the prepared food items.
- Dairy included milk, cheese, yogurt, and butter.
- Other staple foods available for purchase were eggs, juice, rice, bread, beans, cereal, pasta, and limited selection of canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- The store sells hot food, prepared deli sandwiches, and food for onsite consumption.
- Ineligible items included alcohol, tobacco, lottery, household items, and pet food.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food 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, especially competitors that sell similar or identical food items.

Charge Letter Attachment

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. Multiple transactions were made from individual benefit accounts in a set timeframe.

This attachment documents 32 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

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 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. The photographs from the store visit offer no 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 forgotten items.

Counsel explains that co-shopping results in a higher number of transactions that occur in a shorter period of time than expected. Co-shopping may occur but it is unlikely the reason that Appellant has more frequent large transactions by the same household than other similar stores during the review period. This would manifest itself in these household conducting similar transaction patterns at other retailers that they shop. The Retailer Operations Division reviewed nearby similar store and found that this store conducted only two similar transactions sets. It is curious why households would be more likely to co-shop at Appellant than at other similar nearby stores.

Counsel explains that different participants will travel to the store together to make purchases and then separate their purchases to track what each party has used from the benefit account. However, there are only eight of the transactions sets that likely occurred during the same visit. This does not explain the majority of the transactions sets. As indicated earlier, Appellant has not provided any explanation for why this type of behavior would occur at Appellant rather than at nearby stores.

The Retailer Operations Division found that some of the transaction sets were also processed too quickly to be deemed credible. **5 U.S.C. § 552 (b)(7)(E)**.

Counsel reports that Appellant accepts telephone orders. When customers come to pick up the order, they purchase additional items as a second purchase. There was no evidence to support that Appellant accepted telephone orders or any of these transactions were the result of picking up

telephone orders. Moreover, there are only eight of the transactions sets that likely occurred during the same visit.

Counsel also explains that Appellant is located near a homeless shelter and residents will frequent Appellant for convenience meals to take back to the shelter. Counsel further states that these homeless customer make purchase for more frequently than SNAP participants who are located within residences. It may be true that homeless shelter residents make frequent purchases however there is no evidence to suggest that homeless residents make frequent large dollar purchases.

Counsel provides some analysis of four households listed on this Attachment. Counsel states that each of the four households demonstrate a continuous pattern of conducting multiple trips to the store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on or near the same days during multiple months throughout the review period, likely explained by either co-shopping or the simple fact that the shopper forgot an item in his/her previous transaction. The SNAP transaction history during the review period of each of these households was reviewed. The shopping patterns of these households show that they shop differently at Appellant than they do at most other SNAP authored firms and the pattern of transactions are questionable. 5 U.S.C. § 552 (b)(7)(E).

Appellant has not offered any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible food.

Charge Letter Attachment 2: In a series of transactions, the bulk of SNAP households' remaining benefits were depleted within short time frames. This attachment lists 15 sets of SNAP transactions conducted by ten households 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E).

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.

It is not unusual for violating retailers to conduct trafficking transactions in which a household spends the vast majority of its allotment at one store in a short period of time or in a single transaction. A suspicion of trafficking is reinforced when these balance-depleting purchases occur in small stores such as Appellant, where there is minimal overall inventory, with no fresh meat and limited fresh produce. It strains credulity that a household would spend almost the

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.

entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at this store.

Appellant did not submit sufficient evidence that the transactions conducted on the Attachment were for eligible food items only.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 222 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(7)(E)**. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. The staple food stock consisted of canned and pre-packaged foods and snacks, and deli meats and cheeses. There was no fresh unprocessed meat, limited fresh produce (bags of onions, couple of pears, and an apple), no shopping carts or baskets, and minimal counter space. Considering Appellant is a convenience store offering a more limited eligible food stock, this is highly unlikely and likely indicative of trafficking.

Counsel contends that given the prices of items in the store it is not difficult to purchase **5 U.S.C. § 552 (b)(7)(E)** groceries in a single trip and being transported by hand back to the store. The Retailer Operations Division determined that Appellant's total SNAP redemption dollar volume was 94% greater than the average for convenience stores in Kings County and Appellant conducted 78% more SNAP transactions than the average for convenience stores in the county. A household may purchase eligible SNAP food items **5 U.S.C. § 552 (b)(7)(E)** but there is no credible evidence that explains why Appellant has so many larger dollar SNAP transactions than similar store types.

The Retailer Operations Division determined that the transaction pattern of Appellant exceeded a nearby convenience store used for comparison. This comparator store also sold Boars Head meats and at the time of the store visit had a larger quantity these deli meats. Counsel explained that Boars Head meat is a higher quality more expensive deli meat that could explain some of the attraction to the store as well as the larger dollar transactions. The data from this nearby store provided adequate evidence to demonstrate that the transaction patterns at the Appellant firm were unusual.

5 U.S.C. § 552 (b)(7)(E)

Counsel explains that it is common for customers to spend large amounts as a direct result of the lack of nearby alternative stores that offer sufficient inventory, discounted prices, and convenience. The Retailer Operations Division determined that within a one-mile radius of Appellant there are 15 convenience stores, seven small groceries, one medium grocery, one large grocery, two supermarkets, and three super stores. The Retailer Operations Division examined three households identified in the charge letter to analyze their shopping patterns at Idrees Deli compared to their shopping patterns at other SNAP authorized stores. Despite this access to better stocked stores, each of the three households conducted excessively large transactions at Idrees Deli **5 U.S.C. § 552 (b)(7)(E)** of shopping at a supermarket or super store. It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores with a better selection of fresh meat and produce and likely better prices. Counsel contends that transportation inconsistency is

another reason why the store's transactions appear the way they do if transportation to other stores is not dependable. However, these households had access to transportation within a short time frame of their unusual large transactions at Appellant.

Customer Statements

With the administrative review request, counsel submitted eight customer statements. These typed statements state that the customers frequently shop at Appellant, purchase a variety of grocery items, make large purchases, have never been charged extra money to use their SNAP benefits, and have never been offered cash back. The Retailer Operations Division reviewed the transaction history of these SNAP households. Two of the households could not be located. Of the six households that were found in the State database, only one household conducted any of the SNAP transactions listed on the charge letter attachments. The customer statements submitted are not sufficient evidence that any of the transactions listed on the Charge Letter were for eligible food items only.

Store Photographs

Appellant submitted 37 photos of the foods in stock included a variety of canned and pre-packaged foods, snack, candy, water, deli items, and limited amounts of dairy and limited amounts of fresh produce. The photographs are undated and therefore are not sufficient evidence for the store's inventory during the review period. The photos also do not differ significantly from the photos in the record from the store visit, although there is some additional fresh produce in the submitted photographs.

Invoice Analysis

Counsel asserts that the store visit report found that the store was sufficiently stocked to justify the transactions listed in the charge letter. This is not an accurate assumption. The store visit report showed that the store met eligibility criteria for authorization. However, the contractor did not make any determinations regarding the store's stock and whether it was sufficient to satisfy large dollar transactions.

During the initial determination, counsel submitted inventory invoices/receipts. Many of the invoices were either undated or the date was not clear, and therefore were excluded from the analysis. The Retailer Operations Division analyzed the remaining invoices submitted by the firm and determined that they did not cover Appellant's SNAP redemptions and other cash and credit sales during the review period.

Evidence

Appellant makes multiple contentions regarding the agency's ALERT system. Counsel argues that FNS's reliance on ALERT leads to confirmation bias and causes the agency to disregard or interpret evidence in such a way that unreasonably favors the agency's hypothesis that trafficking is occurring. The ALERT system is a computerized fraud detection tool to identify

SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does not by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is supported by 7 CFR §278.6(a) which 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, **evidence obtained through a transaction report under an electronic benefit transfer system**” [Emphasis added.]

The documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and 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. Appellant offered little credible evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, 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.

Appellant submitted inventory receipts and recipient affidavits and contends that these documents are precisely what the Department has stated it looks for from retailers to demonstrate their innocence by a preponderance of the evidence. However, the documents submitted in this case did not demonstrate by a preponderance of evidence that the transactions were for eligible food items only.

Case Law

Appellant cites some case law which it claims supports its position on the ALERT system as well as multiple transactions. It should be noted that considerations of legal precedent through case law is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law.

CIVIL MONEY PENALTY

Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days** specified in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.] Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations.

Counsel requested a CMP with its administrative review request and explains that the effective compliance policy and program at the store is reflected by the store’s significant compliance history since it became an authorized SNAP retailer. There was no evidence submitted to support the existence of a compliance policy and program. In conclusion, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of 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 was deemed correct and proper.

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

May 12, 2021