

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

**J & J West Indian Grocery,**

**Appellant,**

**v.**

**Case Number: C0187893**

**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 a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against J & J West Indian Grocery (hereinafter “J & J Grocery”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP when it imposed a Permanent Disqualification against J & J Grocery on August 26, 2016.

**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.

**CASE CHRONOLOGY**

In a letter dated April 25, 2016, the Retailer Operations Division informed the Appellant that his firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a letter received by the Retailer Operations Division on June 17, 2016 and in telephone conversations with Retailer Operations Division staff on June 20, 2016 and June 23, 2016, the Appellant denied the trafficking allegations and provided explanations for the questionable SNAP transactions that were outlined in the April 25, 2016 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated August 26, 2016, informing the Appellant that J & J Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked September 5, 2016, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated September 21, 2016.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a 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, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

**5 U.S.C. § 552 (b)(7)(E).**

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

7 CFR § 278.6(e)(1)(i) states:

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 § 278.6(f)(1) states, *inter alia*:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

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

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, *inter alia*:

(ii) 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 as specified in § 278.6(i), 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). [Emphasis added].

(iii) 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 penalty. [Emphasis added].

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from November 2015 through February 2016. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value;
- There were multiple transactions made from individual benefit accounts in unusually short timeframes;
- There were transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

### **APPELLANT'S CONTENTIONS**

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the Appellant's replies to the Charge Letter and in the review request postmarked September 5, 2016, the Appellant stated the following summarized contentions, in relevant part:

- The unusual number of transactions ending in a same cents value are the result of J & J Grocery rounding down the price of large purchases of halal meats to the nearest whole dollar and taking off a few dollars from the entire purchase as a discount to SNAP customers;
- The multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers not wanting to wait to have their halal meat order slaughtered and cut up so they purchase the meat items that are ready for purchase and pick up the remaining meat order the next day or within a couple of days of their initial meat purchase;
- The transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes are the result of SNAP customers not having enough funds on their EBT cards to cover the entire purchase so they use another form of payment to cover the remaining purchase balance;
- The excessively large purchase transactions are the result of SNAP customers purchasing a lot of expensive halal meats including goat, lamb, chicken, duck, beef, veal, etc. that are slaughtered and cut-up at a farm that the Appellant owns that is located in St. Cloud, Florida. In addition, J & J Grocery also sells a variety of imported fish from the Caribbean which cost a significant amount of money.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Copies of two pages that have been downloaded from J & J Grocery's website (<http://jjwestindiangrocery.com>) which list the types of food items stocked at the subject store and advertise that the store offers catering for special events.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized J & J Grocery as a small grocery store on October 9, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 19, 2016 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also 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:

- J & J Grocery is approximately 1,500 square feet in size and it has a

storage area outside of the public view that consists of a reach-in freezer;

- J & J Grocery is located in a suburban, commercial area of Kissimmee, Florida;
- Some of the store shelves and freezers were not fully stocked with food items;
- There were no shopping carts and less than 10 hand-held baskets available for customer use;
- J & J Grocery has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was an optical scanner but no conveyor belt for the speedy processing of transactions;
- J & J Grocery has a food stock that is typical of small grocery stores and it offers customers a minimal variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- J & J Grocery is not a WIC Program vendor and it does not sell any infant foods or infant formula;
- Per the store visit observations, the most expensive food items offered for sale at J & J Grocery appear to be frozen fin fish, frozen shellfish, and large bags of rice;
- It does not appear from the store visit observations that J & J Grocery extends credit to customers;
- No signs were posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include grocery package deals;
- The checkout counter has a limited space as it has miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- There were no fresh meats, poultry, or fish items;
- The store offered a minimal amount of frozen meats to include fin fish and shrimp;
- J & J Grocery does not have a deli case/section in which deli meats and cheeses are sold by the pound;
- J & J Grocery does not have a kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and offered for sale to customers;
- Other meat items available for sale included canned fish and canned/potted meat;
- J & J Grocery stocked a minimal variety and amount of fresh produce

- items to include okra, beans, eggplant, carrots, and onions;
- J & J Grocery did not stock any frozen fruits and it stocked only one variety of frozen vegetable in a minimal amount;
  - Other staple foods available for purchase included such items as canned fruits and vegetables, pasta, rice, bread, corn meal, flour, dry milk, packaged cheese, snack foods, cakes/pastries, etc.;
  - Much of the remaining food stock consisted of accessory foods such as carbonated and non-carbonated drinks, coffee, tea, vegetable oil, and seasonings and spices; and
  - J & J Grocery stocked a good supply of ineligible nonfood items such as health and beauty items, clothing, paper products, household items, household cleaning supplies, over-the-counter medications, DVDs/CDs, cell phones, etc.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking.

Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Same Cents Transactions (Charge Letter Attachment 1)**

This Attachment lists 365 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant contends that the unusual number of transactions ending in a same cents value are the result of J & J Grocery rounding down the price of large purchases of halal meats to the nearest whole dollar and taking off a few dollars from the entire purchase as a discount to SNAP customers. The Appellant's unsubstantiated statements are not supported by available evidence. For example, there are no signs in the store advising to its customers that J & J Grocery rounds down purchases to the nearest even dollar amount

(5 U.S.C. § 552 (b)(6) & (b)(7)(C)) when making large purchases of halal meats and that the store takes a few dollars off of the entire purchase as a discount to SNAP customers. Although some of the large SNAP transactions made during the four month review period 5 U.S.C. § 552 (b)(6) & (b)(7)(C), there were many large transactions that did not end in an even dollar amount. In addition, typical retail food stores operate on relatively low profit margins and it is unlikely that a store would be rounding down its prices and/or taking off a few dollars from the entire purchase as a discount to SNAP customers. Likewise, it is unlikely that store clerks would have the authority to choose when to round down amounts or to charge based on the price labels. This method of pricing would be seemingly arbitrary to store customers and would likely lead to more conflicts within the store and not less. As such, it is clear that it is not J & J Grocery's policy to round down purchases to an even dollar amount for SNAP customers who purchase large amounts of halal meats.

Due to J & J Grocery's mostly low cost foods, the larger dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in a total purchase price 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead, when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more dispersed statistical spread 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transaction purchases ending in 0 cents cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

#### **Multiple Transactions Made from Individual Benefit Accounts in Unusually Short Timeframes (Charge Letter Attachment 2):**

This Attachment documents 48 sets of transactions (97 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account as a method to avoid detection of



single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of SNAP customers not wanting to wait to have their halal meat order slaughtered and cut up so they purchase the meat items that are ready for purchase and pick up the remaining meat order the next day or within a couple of days of their initial meat purchase.

In a telephone conversation with Retailer Operations Division staff on June 20, 2016, the Appellant was informed that FNS had conducted a store visit of J & J Grocery and that the contracted Reviewer noted that the store had no meat counter for the processing of halal meats nor did the store have any halal meats in storage that were available for processing. Based on this information, the Retailer Operations Division asked the Appellant to clarify his statement with regard to J & J Grocery slaughtering expensive halal meats per customer order. The Appellant then informed the Retailer Operations Division that he slaughters and custom butchers halal meats at his farm located at 1888 Druline Road in St. Cloud, Florida. The Appellant stated that the farm was located approximately 19 miles from J & J Grocery which is located in Kissimmee, Florida. The Appellant also indicated that he sold fish that cost between \$4.99 and \$7.99 per pound; goat for \$340.00 to \$390.00 each; bulls for \$1,200.00 each; veal for \$900.00 each; ducks for \$40.00 each; and chickens for \$15.00 each. The Appellant also stated that he does not use a price list and that he charges customers a \$.50 (50 cent) per pound processing fee that is a separate charge from the purchased meat.

Based on the Appellant's claim that he slaughters and custom butchers halal meats per customer order at his farm in St. Cloud, Florida, the Retailer Operations Division contacted representatives from the USDA Food Safety Inspection Service (FSIS) who agreed to visit J & J Grocery as well as the Appellant's farm located in St. Cloud, Florida. Therefore, on July 20, 2016, staff from the Florida Department of Agriculture, Division of Food Safety (who performed their routine inspection of J & J Grocery) and FSIS Investigators visited J & J West Indian Grocery. The Investigators found that J & J Grocery did not have a meat counter at the store but the store had a reach-in freezer in which meat products were stocked at the time of their store visit. However, the meat and poultry products in freezer storage did not bear the mark of Federal inspection. FSIS Investigators asked the Appellant about the source of the meat products and requested that he provide them with invoices or records verifying his purchase of the meat items.

However, the Appellant did not provide the Investigators with any purchase records or invoices for the meat items. As a result, FSIS staff detained the meat products that were stored in the reach-in freezer because they were not Federally inspected. These meat items included beef oxtail, beef lungs, beef liver, beef

belly, fresh goat and roasted farm chicken which did not bear a mark of Federal inspection and did not contain any proof of the source of these meat and poultry products that were waiting to be sold to internet and walk-in customers.

The FSIS Investigators also visited the address given by the Appellant for his farm that is located in St. Cloud, Florida. The Appellant had indicated that J & J Grocery slaughtered expensive halal meats per customer order at this farm. Upon visiting the Appellant's farm, the Investigators found that the property was being offered for sale and that there were no animals for slaughter or butchering on the premises. In addition, the Investigators noted that it appeared that there had not been any activity on the farm property for some time. Based on these findings, FNS determined that the Appellant's claim that these questionable SNAP transactions are the result of SNAP customers not wanting to wait to have their halal meat order slaughtered and cut up so they purchase the meat items that are ready for purchase and pick up the remaining meat order the next day or within a couple of days of their initial meat purchase is unfounded.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that maybe purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristic of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. J & J Grocery is not set up to provide for all of one's food needs with no fresh meats, only a small amount and variety of frozen meats, no frozen fruits, only a small amount and variety of frozen vegetables, a very limited amount and variety of fresh produce items, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for small grocery stores to have purchases such as those cited, especially when J & J Grocery stocks only a few high priced food items in minimal quantities so the majority of food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at J & J Grocery are also shopping at other area grocery stores as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at J & J Grocery, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are a total of 14 SNAP authorized retailers located within a 2.0 mile radius of J & J Grocery that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are of a comparable size or larger than J & J Grocery and offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store. Therefore, lack of access to other authorized stores does not appear to be an explanation for J & J Grocery's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at J & J Grocery or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and 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.

### **Transactions in Which the Majority or All of an Individual Recipient Benefits Were Exhausted in Unusually Short Periods of Time (Charge Letter Attachment 3)**

This Attachment documents 177 suspicious transaction sets **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by 122 different households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

The Appellant contends that the transactions in which the majority or all of an individual recipient benefits were exhausted in unusually short timeframes are the result of SNAP customers not having enough funds on their EBT cards to cover the entire purchase so they use another form of payment to cover the remaining purchase balance. The Appellant provided FNS with no documentation to validate his claim, such as receipts for purchases made by SNAP customers during the four month review period, that show that multiple tender types were used for the purchase. With regards to the Appellant's contention, it is important to note that all of the transactions that were listed in this Charge Letter Attachment were for EBT transactions only---they did not include cash/credit/debit, etc. transactions. Therefore, the Appellant's contention does not explain these questionable SNAP transactions.

A government report on SNAP household patterns indicates that after the first day of benefit issuance, on average 80 percent of a household's allotment remains unspent. After seven days, 40 percent of benefits remain unspent.

Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a minimally stocked small grocery store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same. In addition, there are 14 stores located within a 2.0 mile radius of J & J Grocery that are authorized to participate in the SNAP where SNAP households can and do shop. As such, they are not dependent upon J & J Grocery for their staple food needs.

The Appellant did not provide any compelling justification as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at J & J Grocery or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and 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.

#### **Excessively Large Purchase Transactions (Charge Letter Attachment 4)**

This Attachment lists 497 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** As noted previously, there is no indication from the store visit report that J & J Grocery would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of SNAP customers purchasing a lot of expensive halal meats including goat, lamb, chicken, duck, beef, veal, etc. that are slaughtered and cut-up at a farm that the Appellant owns that is located in St. Cloud, Florida. In addition, J & J Grocery also sells a variety of imported fish from the Caribbean which cost a significant amount of money. With regard to the Appellant's contentions, as noted above, the Appellant did not provide sufficient documentation to validate his claim that the excessively large purchase transactions are the result of SNAP customers purchasing a lot of expensive halal meats that are slaughtered and cut-up at a farm that he owns. While the FNS store visit observations did indicate that J & J Grocery stocks a small amount and variety of frozen fin fish and shrimp, the store does not stock enough imported frozen fish products to explain the

questionable SNAP transactions listed in Attachment 4 of the Charge Letter. In addition, the Appellant did not provide FNS with any documentation, such as vendor invoices for the purchase of imported fish during the review period, to validate his claim that the large purchase transactions are the result of SNAP customers purchasing imported fish products from J & J Grocery. As such, the Appellant's contentions are unsubstantiated.

The store visit report and photos show that J & J Grocery was stocked with a limited quantity and variety of staple foods as it stocked only two varieties of frozen meats in limited quantities (fin fish and shrimp), no frozen fruits and only one variety of frozen vegetable, a minimal amount and variety of fresh produce items, and a minimal quantity and variety of processed meats. The inventory report and photos also show that the subject store stocked only a few expensive staple foods indicating that the majority of foods stocked at the store were inexpensive and that these foods would not account for the large purchase transactions that occurred at J & J Grocery as well as showing the store has limited checkout counter space, no shopping carts, and less than 10 hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 14 SNAP authorized retailers located within a 2.0 mile radius of J & J Grocery. Several of these stores are larger than J & J Grocery and offer a greater quantity and variety of food products at comparable, or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that all of the households shopping at J & J Grocery have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located a few miles distance from the Appellant's location. While J & J Grocery does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

The Appellant did not submit any vendor invoices to FNS for foods purchased for J & J Grocery during the four month review period in order to substantiate that J & J Grocery purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that J & J Grocery had purchased sufficient food inventory to account for the firm's SNAP redemption volume,

sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as an unusual number of transactions ending in a same cents value, consecutive transactions by individuals during the same store visit or in a single day, and transactions in which all or the majority of a household's benefits were exhausted in short periods of time. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, a limited variety of frozen meats/seafood and no fresh meats/seafood, limited fresh produce, no frozen fruits and only one variety of frozen vegetable, a greater variety of foods at comparable or lower prices at other stores, no shopping carts and less than 10 hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at J & J Grocery to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a small grocery store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at J & J Grocery compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at J & J Grocery 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the offering of no shopping carts and less than 10 hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets.

Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

## **CIVIL MONEY PENALTY**

As previously indicated, the August 26, 2016 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated April 25, 2016 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against J & J West Indian Grocery is sustained.

## **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that 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 you reside or are 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.

LORIE L. CONNEEN  
Administrative Review Officer

November 13, 2017