

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

Jan Meda Inc Dba Citgo Food Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0188876

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the decision by the Retailer Operations Division to impose a permanent disqualification against Jan Meda Inc Dba Citgo Food Mart (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

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)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Appellant on June 21, 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 June 1, 2016, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of October 2015 through March 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided

by 7 CFR § 278.6(e)(1). The letter also noted that the 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 responded to the charge letter on June 8, 2016, but the response contained no evidence to be considered in support of the CMP. The Retailer Operations Division notified Appellant in a letter dated June 21, 2016, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated June 27, 2016, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence postmarked July 16, 2016, was received from Appellant.

STANDARD OF REVIEW

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means 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 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(e)(1)(i) establishes 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 of SNAP benefits.

7 CFR § 278.6(e)(1)(i) reads, in part, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone"

In addition, 7 CFR § 278.6(a) states, in part, "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that

may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system*” (Emphasis added.)

SUMMARY OF THE CHARGES

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. The charges on review were based on an analysis of SNAP EBT transaction data during a six month period of October 2015 through March 2016. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

STORE BACKGROUND

The FNS initially authorized the Appellant business on October 20, 2014, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a March 7, 2016, 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 EBT transactions at Appellant’s store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business is a gas station convenience store.
- The contractor estimated the store to be about 1800 square feet with no food stored in a storage area out of public view.
- There were no shopping carts and no handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout counter was located behind a plastic security wall with no opening other than a tray for payment. There was a wooden shelf in front of the checkout with an area approximately 1.5 feet by 1.0 feet with the POS device on the left side and merchandise displays (bananas and jewelry) on the right side thereby making it difficult to process large orders.
- The checkout counter had two cash registers and one POS device; no calculators, adding machines, or optical scanners were visible.
- No food packages, bundles, bulk items, or other sales were evident.
- The inventory of staple foods at the time of the visit included: canned fruit and vegetables, fruit juices, nuts, canned meat/poultry/fish, jerky, canned pasta, dry pasta,

rice (small bags only), sugar, cooking oil, bread, baked goods, snacks, cold cereals, baking mix (1), and soups.

- Dairy items included: milk, butter/margarine (3), packaged cheese (2), sour cream (4), ice cream, and cream cheese (4).
- Refrigerated items included: eggs (4 dz), packaged lunch meats, and sausages (4).
- Fresh fruit or vegetables consisted of one bunch of bananas at the checkout counter. There were no frozen fruits or vegetables.
- There was minimal staple food stock with the majority of stock in accessory foods (primarily soda and other drinks), snacks, baked goods, and ineligible items.
- There were no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, no frozen entrees, no fresh or frozen produce except for bananas, no baby foods, no infant formula, no diapers, and few, if any, expensive items.
- Ineligible items included: tobacco, alcohol, lottery, gas, phone accessories, household products, paper products, auto products, pet products, health and beauty items, lighter fluid, charcoal, jewelry, incense, and hats while accessory foods included: condiments, candy, carbonated/uncarbonated drinks, spices, and coffee.
- The store did not stock any ethnic or unique foods.
- The majority of items were priced with most visible prices ending in .x9 cents although there were some snack items/baked goods priced at 2/\$1.00.
- The store was not a WIC vendor.
- Signage in the store was in English.
- Store hours were confirmed by the contracted reviewer during the FNS store visit with store ownership as being 7:00 AM-12:00 AM daily.
- Canned, bottled, and packaged stock was very dusty indicating a slow turnover of inventory and the ice cream freezer was less than half full with ice covered sides.
- Store inventory was less than during the October 13, 2014, FNS store visit.

APPELLANT'S CONTENTIONS

In the response to the letter of charges, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The Appellant business has been serving the community loyally and diligently since its establishment. There have been no allegations or concern from anyone including FNS until the charge letter dated June 1, 2016. Appellant denies the allegation that EBT transactions were made for the exchange of cash rather than eligible food items. There is no physical, eye witness, surveillance, undercover, etc. evidence presented to prove that money or ineligible items were exchanged for customer's EBT benefits. SNAP regulations at Section 271.2 define trafficking as selling ineligible food items or exchanging SNAP benefits for cash. In order to meet the trafficking charge, FNS has the burden of proving that the EBT transactions were made in exchange for cash or ineligible food items and merchandise. The burden of proof is not on the business, but is FNS's responsibility and it does not shift to the business until FNS proves the business committed the acts. SNAP regulations at Section 271.2 define trafficking as selling ineligible food items or exchanging SNAP benefits for cash. FNS ran a few

months of transaction reports showing that selected customers made SNAP transactions two or three times for a specified amount. However, the selected customers and transactions do not show the store sold ineligible items or exchanged benefits for cash. FNS relied on the selected transactions, selected customers, and selected months to decide there was no explanation for these kinds of transactions. Without further investigation or proving whether Section 271.22.1 was violated or not FNS charged the business with trafficking. FNS tried to shift the burden of proof to the business by showing these transactions appear to be irregular, suspicious, repetitive, unexplainable, etc. This is against the law, against the principals of what our country stands for, and is clearly an injustice. The burden of proof of trafficking of SNAP always remains with FNS before the store defends itself. These transactions are indications that FNS needs to investigate more to clear its hunch and the business is ready to explain why FNS is seeing that kind of transaction;

- Regarding transactions in a same cents value, what is the standard of reviewing and determining transactions are unusual? In business, the client is always right and their right to buy multiple packages of the same items in their purchase three or four times a day is respected. FNS has no guidelines for the business to follow on how many times daily a customer can make transactions at the same store. If FNS has a concern that cardholders are abusing his/her card, they should tell them how many times they can use their card. Some of the transactions are exaggerated compared to the evidence. Household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased only on October 15, 2015, and the next transaction by this family was on November 15, 2015. This family purchased two times a day, but only one day a month. It looks like this household is purchasing their monthly consumption once in a month and coming-in twice in one day. Spending that amount of money in one month does not look exaggerated to the store. If this was a clear concern for FNS, then it should have been communicated to the store so that future transactions could be challenged. This is why the business was never suspicious of these purchases. The business never accepted benefits for cash. It is not the duty of the store to limit how many times an EBT customer can use their card in the same store as there is no clear and legal direction to follow. It is FNS's duty to follow-up with a special investigation to come up with the truth. The computer data does not prove the business exchanged EBT for cash or sold ineligible items;
- Regarding multiple transactions in unusually short time frames, FNS considered these transactions as multiple without comparing them to the fact that these customers may have been coming only once or twice in a month. Therefore, there should be no conclusion by seeing these in a day or week, but also in a wider range of time like a month. If a customer comes in twice in one day, but only once or twice in a month it may be concluded as multiple for that specific day, but not for the month. These EBT cardholders are living around the business and are neighbors. This is the nearest location they can find to purchase their day-to-day needs. This multiplicity argument does not prove that the customer is not purchasing foods items, but is exchanging cash;
- Regarding the excessively large transactions, for FNS to consider them large, there must be something to compare them to. The largest amount stated by FNS 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but that figure by itself does not make the purchase large without comparing it to something else. [5 U.S.C. § 552 (b)(6) & (b)(7)(C)] Some families have larger SNAP allotments due to their larger family size and for them this

size transaction may not be that large. You have to compare the family size, what items were purchased, and how often they make purchases from this store. If a family only shops at the store once or twice a month, then that amount may not be large. Even if FNS considers the amount to be large, the business cannot stop the customer from making this large purchase without clear guidelines and limits from FNS. The extent of the purchase is determined by what the customer wants, how many or how much, and whether they are shopping for their monthly consumption all at one time;

- There has been no indication or knowledge by the business until this series of communications by FNS that clients are charging their accounts excessively, repeatedly, and unusually in the store. The business respects that FNS is concerned that the benefits may have been used to purchase ineligible items or have been exchanged for cash, but FNS does not see that the business cannot stop a customer from making multiple purchases at the store or limit what they may purchase. It is not the store's obligation to find out why a customer is purchasing multiple quantities of the same thing and cannot prohibit them from visiting the store multiple times in a day without clear and legal instructions by FNS;
- Mere transactions that look suspicious are not tantamount to prosecution. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** U.S. v. Tesema Lulseged, U.S. Court for Northern District of Georgia. FNS investigated the business for three years because of alleged food stamp violations and sent undercover investigators to the store and performed detailed investigations until FNS had clear and convincing evidence to charge for trafficking. FNS used the suspicious transactions to investigate more fully before charging. If there is clear concern that a client is going to abuse their benefits, then FNS needs to come-up with a clear and detailed guideline for stores to follow to detect, stop, or report a customer abusing EBT benefits;
- As seen from our records, SNAP sales have been declining from month to month. This business has had steady SNAP sales without sales skyrocketing and there have been no reports from any interested party of SNAP violations. The business has had no SNAP violations in all these years and is willing to report any illegal activity by cardholders if there is a system created for this purpose. The EBT transactions only indicate that a customer may not be using EBT for eligible food items, but indication does not mean proof that illegal transactions are occurring. The burden of proof rests with FNS before it shifts to the store to defend itself. This business is against making any illegal transactions. FNS can come up with a better way of tackling this problem by limiting the purchasing power of cardholders suspected of making unusual charges, multiple changes, or large charges and we can all work to succeed in our endeavors and make a better America;
- Appellant has already sent facts, arguments, legislation, and conclusions in support of its contentions. It is not possible to present evidence when the only proof produced by FNS against the business is EBT transaction data. Appellant argued and explained what this data represented and that it does not show proof that the business allowed SNAP customers to use EBT to purchase ineligible items or to receive cash back; and,
- Appellant has added a letter from the Ethiopian Community Association giving insight that ownership has been a member and is involved in social activities and a 2016-2017 Certificate of Award from AFFCO-Fire & Life Safety to Jan Meda Inc. dba Citgo Food Mart for their contribution in preventing fire accidents.

Appellant submitted a letter dated July 11, 2016, from the Ethiopian Community Association in Atlanta, Inc. and a certificate from the AFFCO-Fire & Life Safety to the Appellant business for supporting fire prevention. No other evidence was submitted in support of Appellant's contentions.

The preceding may represent a summary of Appellant's contentions 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 herein.

ANALYSIS AND FINDINGS

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 any reasonable explanations for 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. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Unusual numbers of transactions ending in a same cents value

The firm had a total of 2,615 SNAP transactions during the review period. Of these, 475 transactions were in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and above with 127 of these transactions ending in the same cents value of .99 cents accounting for more than 26 percent of these transactions. This Attachment lists 127 same cent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with 43 transactions for amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The FNS store report and photographs revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in same cents values. There were no cases of eligible food items for sale such as cases of carbonated and uncarbonated beverages and no bulk items, such as large bags of rice or other foods, available for sale. It is highly unlikely that more than 26 percent of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would end in a same cents total of .99 cents when the majority of items in the store had prices ending in .x9 cents. The high percentage

of same cent transactions combined with the number of high dollar transactions is irregular and suspicious for this type store.

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment instead asking about the standard of review and how FNS determines transactions are unusual. Appellant also stated that in business, the client is always right and their right to buy multiple packages of the same items in their purchase three or four times a day is respected. FNS has no guidelines for the business to follow on how many times daily a customer can make transactions at the same store. If FNS has a concern that cardholders are abusing his/her card, they should tell them how many times they can use their card.

The inventory report from the FNS store visit shows this is a typically stocked convenience store offering a very limited variety and quantity of SNAP eligible staple food items as well as a large variety of the accessory foods and ineligible items usually found in convenience stores. The store visit photographs show there was minimal staple food stock with the majority of stock in accessory foods (primarily soda and other drinks), snacks, baked goods, and ineligible items with the business carrying few, if any, high dollar items. The photographs from the FNS store visit on March 7, 2016, show that most items in the store do have price stickers with almost all visible prices ending in .x9 cents except for some snack items/baked goods priced at two for \$1.00. No food packages, bundles, case sales, or other sales were evident. This Review Officer does acknowledge that in transactions involving only one item or a very small number of items (e.g. 2 or 3 items) there could possibly be a higher incidence of totals ending in .99 cents; however, the incidence of this occurring become less likely as the quantity of items purchased increases and would be unlikely to have any validity in the higher dollar value transactions such as those seen in this Attachment that would have involved many items of differing prices. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same dollar amount of .99 cents. An analysis of the 2,140 transactions at the Appellant business 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the period under review showed 221 transactions ending in .99 cents accounting for 10.3 percent of these transactions. As previously stated, the incidence of totals ending in .99 cents for transaction amounts 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was 26.7 percent. An increase of more than 5 U.S.C. § 552 (b)(7)(E) in the incidence rates below and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would be statistically impossible based on the pricing structure in place at the Appellant business. Based on this discussion, it is implausible that transaction totals ending in a same cents value of .99 cents would occur in more than 26 percent of the transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with legitimate eligible food purchases.

With regards to Appellant's contention that ownership has no control over how much and how often SNAP customers spend their benefits, it must be noted that SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use, but rather because based on the pricing structure in place it is unlikely that more than one transaction in four would end in a total of .99 cents if the transactions consisted solely of eligible food items.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these

repeating same cent transactions are legitimate. When many transactions end in a same cents amount, it appears that these transaction amounts were contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in Attachment 1 have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Multiple transactions in unusually short time frames

This Attachment documents 48 total transactions in 21 sets of two or more transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conducted by 16 different households 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of the subsequent transactions in each set 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and they nearly equal or exceed the dollar amount of the subsequent transactions in more than 76 percent (16) of the 21 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is one set comprised of four individual transactions and four sets comprised of three individual transactions while the remaining 16 sets are comprised of two transactions. It is not a usual shopping pattern to see so many purchases, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), by the same recipients as documented in this Attachment. These sets of transactions appear to be in amounts which are indicative of trafficking.

Examples of these transactions include:

- On January 17, 2016, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received its monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 1.27 miles away from Appellant's location. Later that same day it conducted four transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) at the Appellant business totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) reducing its SNAP benefit level 5 U.S.C. § 552 (b)(6) & (b)(7)(C) leaving little or no benefits for food purchases during the remaining 30 days until the next month's allotment. During the period under review this household conducted only these four transactions at the Appellant business while conducting 25 transactions at 10 stores located between 1.27-29.01 miles away. This household shopped almost exclusively at super stores and supermarkets with 21 of the 25 transactions at other stores occurring at six super stores and three supermarkets all of which were located more than 1.27 miles away from Appellant's location. It is inexplicable that a household that had never shopped at the Appellant business would conduct a series of four large dollar value transactions in a single day nearly exhausting its monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of receipt and just after having spent a much smaller amount at a full-line supermarket that would have carried a greater variety and quantity of products at lower prices. It is also suspicious that this household would travel miles away from its usual shopping area to transact 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a minimally stocked gas station convenience store unless it were trafficking its SNAP benefits.
- On November 22, 2015, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a single person household with a monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C),

conducted a manually keyed transaction at the Appellant business 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and returned 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later to conduct a swiped transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) reducing its SNAP benefit level 5 U.S.C. § 552 (b)(6) & (b)(7)(C) leaving no benefits for food purchases during the remaining 29 days until the next month's allotment. During the period under review this household conducted only these two transactions at the Appellant business while conducting 43 transactions at 18 other SNAP retailers located up to 17.27 miles from Appellant's location with 32 transactions occurring at nine super stores and three supermarkets. This household conducted a total of 45 transactions at 19 SNAP retailers during the review period and had only the one manually keyed transaction cited above 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Manually keyed transactions are those in which the magnetic strip is not being read by the store's POS device and the clerk must manually key enter the 16 digit EBT card number. A review of EBT transaction data showed that Appellant's POS device was functioning properly as there were swipe transactions by other households before and after this manual transaction. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have the SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then enters the PIN. It is an indication of trafficking when the same card is used for both manual and swipe transactions.

- On December 15, 2015, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received its monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a national chain super store located 3.19 miles away from Appellant's location. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later at 3:12 PM this same household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later conducted a second transaction for the same amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that the appellant business's cash register is located behind a plastic security wall with a very small checkout area, it has no scanner or shopping carts to move the large number of items to the checkout area, and offers no food packages, bundles, or bulk items that would account for the same large dollar amount it would be impossible for this household to transact 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Later that same day, this household travelled 5.76 miles to transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at another national chain super store. The very next day it returned to the Appellant business and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On January 15, 2016, this household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 1.27 miles from Appellant's location. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later it returned to the Appellant business and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the remainder of the afternoon, this same household travelled to two different supermarkets located 17.5 and 19.42 miles away and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). During the period under

review this household conducted 12 transactions at the Appellant business ranging in dollar amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) while conducting 59 transactions at 15 other SNAP retailers, 14 of which were located between 3.19-29.45 miles from Appellant's location. Fifty-three of the 59 transactions at other stores occurred at 11 super stores and one supermarket most of which are located in a cluster 16.17-17.5 miles north of Appellant's location. Appellant has provided no credible reasons as to why a household would travel more than six miles round trip from its regular shopping area to conduct multiple transactions totaling to large dollar amounts at a minimally stocked convenience store when it shopped on a regular basis at much larger stores during the period under review as evidenced by 53 transactions occurring at super stores and supermarkets. The only plausible explanation is that this household was trafficking.

In response to this Attachment, Appellant contends that FNS considered these transactions as multiple without comparing them to the fact that these customers may have been coming only once or twice in a month. Therefore, there should be no conclusion by seeing these in a day or week, but also in a wider range of time like a month. If a customer comes in twice in one day, but only once or twice in a month it may be concluded as multiple for that specific day, but not for the month. These EBT cardholders are living around the business and are neighbors. This is the nearest location they can find to purchase their day-to-day needs. This multiplicity argument does not prove that the customer is not purchasing foods items, but is exchanging cash. Some of the transactions are exaggerated compared to the evidence. Household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) purchased only on October 15, 2015, and the next transaction by this family was on November 15, 2015. This family purchased two times a day, but only one day a month. It looks like this household is purchasing their monthly consumption once in a month and coming-in twice in one day. Spending that amount of money in one month does not look exaggerated to the store. If this was a clear concern for FNS, then it should have been communicated to the store so that future transactions could be challenged. This is why the business was never suspicious of these purchases.

With regards to Appellant's contentions, the SNAP transactions listed in this Attachment are suspicious because they are large transactions being conducted by a specific household in a short period of time at a minimally stocked convenience store. They display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. The transactions in this Attachment do not contain the characteristics associated a recipient purchasing a forgotten item right after checking-out or households returning to purchase a forgotten item or two. It is certainly not unusual for a small number of SNAP households to conduct multiple transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For example, mothers may shop and later send a child to the store to pick-up a forgotten item. However, it is unusual that the second transaction amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in all of these transactions and that they equal or exceed the dollar amount of the first transaction in 76 percent of the sets. For households living nearby making multiple trips due to walking, it would be expected that the transactions would be somewhat similar in dollar amount since the business carries no expensive items yet one-third of the transaction sets (7 of 21) differ in dollar amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) thereby making this possibility unlikely. It is also unusual

based on available food stock that all of the transaction sets in this Attachment total 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Regarding household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cited by Appellant, Appellant contends that this household only conducted two transactions in the same day at the Appellant business during October and November 2015 and that it was buying its groceries for the entire month during these transactions and therefore was not suspicious. A review of the shopping pattern for household 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a single person household with a monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C), shows that it received its monthly benefit on October 15, 2015, and at 8:28 AM conducted four transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with the first two transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As discussed in the previous example, it is improbable based on the store's physical structure and facilities, combined with the lack of any expensive eligible food items, that two transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) could be completed in this short a period of time and more likely that they involved trafficking as dividing large transactions into a series of smaller ones has long been a method stores have used to try to avoid suspicion. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later that same day, this household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 1.27 miles from Appellant's location. On November 15, 2015, the household received its monthly allotment and at 8:23 AM transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later conducted a second transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It returned to the Appellant business at 12:55 PM and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later transacted m 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the same full-line supermarket. This household then returned to the Appellant business at 3:04 PM and conducted three transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In summary, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) conducted six transactions at Appellant's minimally stocked convenience store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) that totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C) while spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a much larger and better stocked supermarket that would offer a greater variety and quantity of food items at lower prices. This household conducted no transactions at the Appellant business in December 2015, but transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in January 2016. During the period under review, this household conducted 11 transactions at the Appellant business while conducting 34 transactions at 11 other SNAP retailers. Nine of these 11 retailers are located more than 27 miles away with most in or around Monroe, Georgia. The only logical explanation of why a household that has ready access to transportation would conduct multiple transactions totaling to large dollar amounts at a minimally stocked convenience store while spending lesser amounts at much larger stores is that the household was trafficking its SNAP benefits for cash.

The FNS store visit report shows the business offers a limited stock of SNAP eligible food with no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, no frozen entrees, no fresh or frozen produce except for several bananas, no baby foods, no infant formula, and no diapers making it unlikely to be the store of choice for large SNAP households. The inventory report and photographs also show no expensive eligible foods in stock that would

account for these large amounts as well as showing the store has limited checkout counter space, no scanner, and no shopping carts or hand baskets in which to transport the large number of items required to make-up these large transaction amounts. Without these, it is unlikely such large dollar value transactions could be for actual food purchases and more likely they are trafficking. An analysis of the shopping patterns for all of the 16 households listed in this Attachment shows that all of the households shopping at Jan Meda Inc Dba Citgo Food Mart have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located nearby and at a distance from Appellant's location. This analysis also identified 10 households that conducted 12 or fewer transactions at the Appellant business during the six month review period indicating that they were not regular customers; six of these households conducted seven or fewer transactions. While Jan Meda Inc Dba Citgo Food Mart does offer some staple food items, SNAP recipients listed in this Attachment are already shopping at other larger SNAP retailers 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.

A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 79.1 percent of a household's allotment remains unspent. Even after seven days, 42 percent of benefits still remain unspent. It typically takes two weeks to deplete 78.1 percent of one's benefits. This report further revealed that households most often redeemed their benefits at supermarkets and super stores with only four percent of households never shopping in a supermarket. Participating households typically made several (just over nine on average) relatively small purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) with SNAP benefits each month. Making single or multiple transactions of large dollar amounts or cumulatively large dollar amounts, and/or depleting substantial amounts of one's allotment in one day, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP benefit households. Rather, transactions over a short period of time of large value, or large cumulative value, in which SNAP benefits are exhausted are an indicator of trafficking.

There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in Attachment 2 indicate a series of SNAP purchases that total to large dollar amounts. The record also shows that all of the households cited in this Attachment shop at a variety of other stores, primarily supermarkets and super stores, often located at a distance from Appellant's location. Conducting multiple transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) is a method which stores use to avoid high dollar transactions that cannot be supported and are an indicator that trafficking may be occurring.

High Dollar Value Transactions

This Attachment lists 205 individual EBT transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)). The average SNAP transaction amount for this type store in Georgia during the review period was \$6.91 and was \$6.47 for DeKalb County. The SNAP transactions listed in Attachment 3 are all at least (5 U.S.C. § 552 (b)(7)(E)) higher than the average SNAP purchase amount for this store type

¹ "Benefit Redemptions in the Supplemental Nutrition Assistance Program", report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

in DeKalb County. The 205 excessively large SNAP EBT transactions at Appellant's business for the review months totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which represents more than 53 percent of all SNAP redemptions at Appellant's business during the period under review. This is unusual and indicative of trafficking.

The record shows that within a one mile radius of Appellant's store there are five SNAP authorized retailers including one small grocery store, one combination grocery store, and three convenience stores. There are four super stores and two supermarkets located between 1.00- 1.98 miles. The evidence under review shows that SNAP households shopping at Jan Meda Inc DbA Citgo Food Mart are also shopping at other nearby stores, as well as at full-line supermarkets and super stores located nearby as well as at a distance from Appellant's location that offer a greater variety and quantity of SNAP eligible foods items for better or comparable prices than the customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

- On November 21, 2015, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received its monthly SNAP allotment of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and over the next four days conducted seven transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at three different super stores and three different supermarkets located between 3.54- 5.55 miles from Appellant's location. On November 27, it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business and the very next day transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 3.9 miles away from the Appellant business. On December 24, 2015, this same household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business followed by transactions totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at two super stores located 1.38- 5.55 miles away. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business and following this went to another super store located 3.54 miles away and spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On January 21, this household received its monthly SNAP allotment and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 1.27 miles away and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store located 3.54 miles away and later that same day it conducted two transactions at a super store and a supermarket located 5.09 and 7.21 miles away totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This household conducted no transactions at the Appellant business during the months of October 2015, February 2016, or March 2016 and during the review period it conducted only the four transactions cited above at the Appellant business while conducting 85 transactions at 29 other SNAP retailers that included 11 super stores and three supermarkets. The majority of these retailers are located in a cluster 3.54-4.51 miles west of Appellant's location making it reasonable that the household's residence is somewhere in this vicinity as well. It is inexplicable

and suggestive of trafficking that this household would conduct multiple sizeable transactions at the Appellant business before and after conducting transactions at larger stores that would offer a greater variety and quantity of eligible food items at lower prices or why it would travel more than seven miles round trip from its regular shopping area to shop at Appellant's minimally stocked business. This shopping pattern is indicative of trafficking.

- On October 5, 2015, household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) received its monthly SNAP allotment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at two convenience stores located 2.45 and 3.08 miles away from Appellant's location and also transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store located 2.13 miles away. The very next day, this household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a convenience store located 3.08 miles away and then conducted two transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business 5 U.S.C. § 552 (b)(6) & (b)(7)(C). On October 7, it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a national chain super store located 3.19 miles away and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store located 3.54 miles away. Appellant provided no explanation as to why a household that had just purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food items at a super store and two convenience stores, all located more than 2.13 miles away, would travel miles out of its way to shop at Appellant's minimally stocked convenience store spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The likeliest explanation is that this household travelled this distance in order to exchange its SNAP benefits for cash. On October 9, 2015, this same household transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a full-line supermarket located 3.31 miles away and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business. The very next day, October 10, it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store located 2.13 miles away and on October 15 it transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant business. This household conducted only the four transactions cited above at the Appellant business while conducting 156 transactions at 26 other SNAP retailers that included eight super stores and five supermarkets. Sixteen stores accounting for 145 of the 156 other transactions are located between 2.01-6.29 miles west of Appellant's location indicating that the household likely resides in this area. Appellant provided no contentions that would explain how this household conducted 75 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at seven other convenience stores with an average transaction amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) while conducting four transactions at Appellant's convenience store that totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for an average 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per transaction leaving trafficking as the logical explanation. It is inexplicable and suggestive of trafficking that this household would conduct sizeable transactions at the Appellant business before and after conducting transactions at larger stores that would offer a greater variety and quantity of eligible food items at lower prices or why it would travel miles away from its regular shopping areas to shop at the Appellant business. This shopping pattern is indicative of trafficking.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. The examples cited above clearly show that households in this Attachment are regularly shopping at much larger stores and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at Appellant's smaller and minimally stocked business. A transaction in the amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** may not be unusual, irregular or inexplicable if conducted at a full-line supermarket or superstore; however, this same transaction value seems unusual, irregular, or inexplicable if conducted at a convenience store. Since Appellant's business carries no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, no frozen entrees, no fresh or frozen produce except for several bananas, no baby foods, and offers few, if any, expensive items, these patterns are deemed to be suspicious. As previously stated, 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. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

The evidence shows that the difference in the total SNAP transaction dollar amount and the total number of transactions for DeKalb County convenience stores during the review months and at Jan Meda Inc Db a Citgo Food Mart is significant. The total transaction dollar amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** at Jan Meda Inc Db a Citgo Food Mart is more than 70 percent larger than the amount for like type stores in DeKalb County while the average transaction amount of \$9.18 is more than 41 percent larger as shown in the table and chart below. For comparison purposes, the transaction data for the four closest convenience stores is also included and exhibits similar trends. None of Appellant's contentions explain these unusual and suspicious differences.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

The evidence also shows that this store had irregular data compared to like type convenience stores in DeKalb County for the same time frame as seen in the chart and table below. Appellant's transaction count and dollar volume ranges were substantially greater than that of other DeKalb County convenience stores **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. While there are normally few transactions in these higher ranges, the chart shows that most stores of this type do still have a small number of them indicating that the Appellant business may be dividing larger trafficking transactions into smaller ones as previously discussed in Attachment 1. Dividing large transactions into a series of smaller transactions has long been a technique used by retailers to avoid suspicion.

5 U.S.C. § 552 (b)(7)(E)

Appellant contends that for FNS to consider the transactions in this Attachment as being excessively large there must be something to compare them to. The largest amount stated by

FNS 5 U.S.C. § 552 (b)(6) & (b)(7)(C), but that figure by itself does not make the purchase large without comparing it to something else. Some families have larger SNAP allotments due to their larger family size and for them this size transaction may not be that large. You have to compare the family size, what items were purchased, and how often they make purchases from this store. If a family only shops at the store once or twice a month, then that amount may not be large. Even if FNS considers the amount to be large, the business cannot stop the customer from making this large purchase without clear guidelines and limits from FNS. The extent of the purchase is determined by what the customer wants, how many or how much, and whether they are shopping for their monthly consumption all at one time.

Information obtained during the FNS store visit on March 7, 2016, shows that Jan Meda Inc DbA Citgo Food Mart offers a limited variety and quantity of SNAP eligible food items, many accessory foods, and many ineligible items typically found in convenience stores. There is no apparent legitimate reason for the high transaction amounts at Appellant's store given the very limited stock of staple foods and the fact that: tobacco, alcohol, lottery, gasoline, phone accessories, health & beauty items, household/paper/auto/pet products, jewelry, charcoal, lighter fluid, incense, and hats are not eligible for purchase with SNAP benefits. The business carries no special foods or offers any unique services making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. No itemized cash register and EBT receipts for the period under review were furnished to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. Additionally, Appellant's store does not have shopping carts or a scanner thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely the amounts were contrived.

Other Contentions

Regarding Appellant's contentions, the FNS retailer electronic application form contains a certification page whereby applicants must confirm their understanding of and agreement with SNAP retailer requirements in order to complete the application process. Store ownership did certify its understanding and agreement when it applied for authorization as a SNAP retailer in 2014. The "SNAP Retailer Training Guide" is also provided to all retailers upon their authorization/reauthorization and clearly states that store owners or operators are legally responsible for the own actions as well as the actions of everyone working in their store and that violations may include being disqualified from SNAP. This guide and the video accompanying it are both available online through the FNS retailer web site and provide detailed information for SNAP retailers regarding compliance with SNAP rules and regulations. Regardless of whom the ownership of a store may utilize to handle store business, the ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Regardless of the extent of ownership's presence at the subject firm, it is responsible for all SNAP transactions at the firm. Additionally, a record of

participation in 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 those charges. The “SNAP Retailer Training Guide” also provides information for retailers and others to report violations or suspected violations of SNAP regulations to the USDA Office of Inspector General Hotline and includes a poster to be displayed in the store encouraging people to report SNAP fraud and abuse.

While traditional undercover operations are still in use by USDA, such as the one involving Tessema Lulseged, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring. SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, 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). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at Jan Meda Inc Db a Citgo Food Mart during the period under review.

This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on March 7, 2016, a transaction comparison and analysis of nearby like type stores, and analysis of shopping patterns for recipient households conducting transactions at Appellant’s business during the review period. There are like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking.

Since Jan Meda Inc Db a Citgo Food Mart is a typical convenience store with no unique foods, business practices, or services offered, including the availability of bulk food items, the surrounding stores are therefore representative and the comparative data compiled by USDA consequently is relevant. Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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. The Retailer Operations Division determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter Attachments.

Contrary to Appellant's contentions of decreases or steady figures, a review of the Appellant business's SNAP redemptions showed an increase in the average SNAP transaction dollar amount during each of the last five months of 2015 (August through December 2015) and January 2016 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This dollar amount then dropped markedly 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in March 2016 which was also the month the FNS store visit occurred. It is not unusual for a decrease to occur after store visits in those cases where the Appellant business was engaged in trafficking. No explanation was forwarded by Appellant for this unusual and significant decrease in the average SNAP transaction rate. The letter from the Ethiopian Community Association and the Certificate of Award from the AFFCO-Fire & Life Safety provide no basis to dismiss the current charges or to mitigate their impact.

It is herein determined that Appellant has not provided a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments was due primarily to trafficking in SNAP benefits.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

No documentation was advanced during the specified time frame that Appellant met the criteria as required by § 278.6(i) to be eligible for a trafficking CMP. As such, Retailer Operations determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

CONCLUSION

Retailer Operations has presented a case that Appellant has likely trafficked in SNAP benefits. Retailer Operations' 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. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type stores in the county and state.

The retailer has not provided sufficient evidence to rebut the prima facie case that Appellant most likely trafficked 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 in fact occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

August 31, 2016
DATE