

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

Jessica Market,)
)
 Appellant,)
)
 v.)
)
 Retailer Operations Division,)
)
 Respondent.)
 _____)

Case Number: C0192242

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 Jessica Market (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 October 17, 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 August 30, 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 January 2016 through June 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 charges in a letter postmarked September 19, 2016, admitting to the business offering credit accounts. The Retailer Operations Division by letter dated September 26, 2016, requested additional evidence of the existence of credit accounts at the business. Appellant responded to their request by letter postmarked October 11, 2016, that included no documentation of credit accounts. The Retailer Operations Division, by letter dated October 17, 2016, notified Appellant 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 CMP 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 postmarked October 25, 2016, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. No subsequent correspondence has been 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 . . ."

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

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.)

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

7 USC 2018 (b)(7)(e). It is imperative that the retailer provide evidence to refute charges of trafficking. Such evidence may include an accounts receivable ledger, which lists the name of each recipient as well as the dates and amounts of each transaction the retailer claims to be a credit account transaction. The determining office shall compare the credit information provided by the retailer against the transactions outlined in the letter of charges and the recipient personal identifying information available from the State EBT administrative terminals. If the retailer does not provide adequate proof, the retailer shall be permanently disqualified for trafficking.

7 CFR §278.6(b)(2)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence ... that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).”

7 CFR §278.6(e)(1) reads, in part, “FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in §271.2.”

7 CFR §278.6(i) states, inter alia: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

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

January 2016 through June 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.

APPELLANT'S CONTENTIONS

- Store ownership was totally unaware of these transactions or what her employee did. She is a single mother of two and works full-time as a nurse with an employee handling the business. She talked to her customers and they didn't know anything because her employee who was working over that period had run away on June 8, 2016, at 5:00 AM and gave the store keys to her residents. This employee took money and three blank checks and the owner filed a police complaint against him on June 14, 2016;
- The owner also reported that she had divorced 7 U.S.C. 2018 (b)(6) & (b)(7)(c) in 2008 and he is not associated with the business. She had notified the USDA office in Sacramento after she received a letter from them. All of the store licenses are in her name;
- The owner found three notebooks that were being used for customers' credit and thought that they collected money from customers when they received their SNAP benefits, but has no proof that items were sold on credit. She found some random books and talked to those customers who told her they never paid with a SNAP card. The owner attached copies of receipts of cash register settlement reports which were shown to her as total day receipts by her employee. She has been trying her best to resolve this issue, but is completely unaware of the process;
- The owner was only able to figure out about the first three or four figures on the FNS letter. The store has a lot of stuff on sale like two liter soda at two for \$5.00 and two for \$3.00, energy drinks at two for \$4.00, etc. so they might have bought those kinds of things; and,
- Ownership was unable to resolve these issues after talking to the Retailer Operations Division staff. She is still trying to contact her employee, but she has not been able to reach him. She understands that she is responsible, but she is also a single mother of two and works full-time as a hospital nurse. It was tough to pay attention, but in the future the owner promises to be organized and careful about her business and will totally track all stuff [sic]. She has owned the business for 10 years and never had anything like this happen before and requests help investigating this.

Appellant submitted copies of business licenses and utility bills showing the store is in her name, copies of cash register printout reports, and a copy of her divorce decree in support of these contentions.

Appellant submitted no other documentation or evidence in support of these 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.

Store Background and FNS Store Visit

The FNS initially authorized the Appellant's store on November 16, 2006, and reauthorized the business on May 15, 2012; 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 July 15, 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 was a typically stocked small convenience store offering a very limited variety and quantity of staple foods and carrying no unique items or ethnic foods. The store also offered no distinctive services.
- The contractor estimated the store to be about 950 square feet with no food stored in a storage area out of public view.
- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- No food packages, bundles, case sales, bulk products, or other sales were evident and no cased items were available for sale.
- The checkout counter was approximately 1.5 feet by 2.0 feet and had merchandise displays on both sides. The small size of the checkout counter would make it problematic

to process large orders. The checkout counter had one cash register, one POS terminal, and a scanner.

- The inventory of staple foods at the time of the visit included: bottled/canned fruit and vegetables, fruit and vegetable juices, a minimal quantity and variety of baby foods, canned meat/poultry/fish, rice (one small box), Rice a Roni, flour (four), cooking oil, baked goods, snacks, hot cereals (two), cold cereals, baking mixes, pancake mixes, dry pasta (one), dry noodles (one), canned pasta, soups, mac&cheese (three), jerky, and bagged nuts.
- Dairy items included: milk, butter, margarine, packaged cheese, sour cream (four), and ice cream.
- Refrigerated items included: eggs, packaged lunch meats, sausages, bacon, and hot dogs. Frozen foods included a variety of heat&eat sandwiches such as Hot Pockets, cheeseburgers, chimichangas, burritos, etc.
- The business had no fresh fruit or fresh vegetables and there were also no frozen fruits or vegetables.
- The store had a very minimal stock of staple foods with the majority of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- There were no fresh or frozen unprocessed meats or seafood, minimal processed meats and no processed seafood, no frozen processed meats or seafood, no frozen entrees, no fresh or frozen produce, a limited quantity/variety of canned and packaged staple food items, no bread or rolls, minimal baby foods, no infant formula, and no expensive eligible food items.
- Ineligible items included: tobacco, lottery, alcohol, household products, paper products, pet products, toys, jewelry, hats, and hot food/drinks while accessory foods included: carbonated/uncarbonated drinks, spices, condiments, candy, coffee, tea, and cocoa.
- Many food items were not priced, but all items with visible prices ended in .x9 cents except for some snacks priced at \$0.50 and \$2.00 and bottled drinks priced at \$0.99 and two/\$2.00. This is the most common pricing structure for stores of this type.
- The store was not a WIC vendor.
- Signage in the store was in English.
- Store hours were confirmed by the reviewer with a store worker during the FNS store visit as being 6:00 AM-9:00 PM daily and closed Mondays and Tuesdays.
- The store visit report and photographs noted empty/sparsely stocked shelves, dust on the tops of canned/bottled goods, and ice crystals on the ice cream all indicative of a slow turnover of staple food items.

Unusual numbers of transactions ending in a same cents value

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

Appellant contends the transactions ending in a same cents value are because the store has a lot of stuff on sale like two liter soda at two for \$5.00 and two for \$3.00, energy drinks at two for \$4.00, etc. so SNAP customers may have purchased these types of products.

The inventory report from the July 15, 2016, FNS store visit shows this is a typically stocked

convenience store offering a minimal variety and quantity of SNAP eligible food items as well as a large variety of the accessory foods and ineligible items usually found in convenience stores. The store visit photographs confirm that there was very limited staple food stock with the majority of stock in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items with the business carrying no high dollar items. Many food items were not priced, but all items with visible prices ended in .x9 cents except for some snacks priced at \$0.50 and \$2.00 and bottled drinks priced at \$0.99 and two/\$2.00. This is the most common pricing structure for stores of this type. No food packages, bulk products, bundles, case sales, or other sales were evident that would explain these unusual same cents transactions. 7 USC 2018 (b)(7)(e).

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 are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in this Attachment 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

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

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

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

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

With regards to Appellant's contentions, 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 listed in this Attachment are questionable and therefore suspicious because they are large transactions being conducted by a specific household in a short period of time at a very minimally stocked convenience store and display characteristics of use inconsistent with the nature and extent of the store's stock and facilities. The household example cited above does not contain the characteristics associated with a recipient making a payment on a credit account and then purchasing groceries or of two different household members shopping together and conducting separate transactions using the same EBT card. The transactions in this Attachment also do not contain the characteristics associated with a recipient purchasing a forgotten item right after checking-out or households returning to purchase a forgotten item or two. 7 USC 2018 (b)(7)(e).

The FNS store visit report shows the business offers a very limited stock of SNAP eligible food with no fresh or frozen unprocessed meats or seafood, minimal processed meats and no processed seafood, no frozen processed meats or seafood, no frozen entrees, no fresh or frozen produce, minimal baby foods, no bread or rolls, no infant formula, and a limited quantity/ variety of canned and packaged staple food items making it unlikely to be the grocery store of choice for SNAP households. The store visit inventory report and photographs 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 and no shopping carts or hand baskets in which to transport the large number of low priced 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 involve trafficking.

An analysis of the shopping patterns for all seven households listed in this Attachment shows that all of these households have ready access to transportation as evidenced by their shopping at a variety of other stores, including super stores and supermarkets, located nearby and at a distance from Appellant's location. FNS records further show there are two supermarkets, one super store, and two medium grocery stores located within one mile of Appellant's location that offer greater varieties and quantities of food items at lower prices than would be found at a very minimally stocked convenience store. One of the medium grocery stores is located just steps from Appellant's location. Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any viable explanations for the irregular shopping patterns exhibited by the households in this Attachment as contentions of credit have been unsubstantiated. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a convenience store that offers a very minimal selection of staple food items and has no shopping carts or hand baskets that would be needed for the large transactions in this Attachment. Based on this discussion, trafficking is the only feasible explanation for these irregular shopping patterns.

There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts by store employees to obscure trafficking by fabricating transactions and is a method which stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

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

The record shows that within a one mile radius of Appellant's store there are 29 SNAP authorized retailers including: one super store, two supermarkets, five combination grocery store, two

medium grocery stores, one bakery, one farmers market, and 17 convenience stores. There are four stores located within 0.25 miles or 440 yards of the Appellant business (two medium grocery stores and two convenience stores). The evidence under review shows that SNAP households shopping at the Appellant business 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 that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. 7 USC 2018 (b)(7)(e):

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

The evidence shows that the difference in the average SNAP transaction dollar amount and the total SNAP transaction dollar volume for Butte County convenience stores during the review months and at Jessica Market is significant. 7 USC 2018 (b)(7)(e).

Additionally, evidence shows that this store had irregular data as compared to like type convenience stores as seen in the table below. This table shows Appellant's transactions compared to the average for convenience stores in Butte County during the review period with each row containing a separate transaction range in ten dollar increments. Appellant's transaction count and dollar volume ranges are significantly more than double that of other Butte County convenience stores in all ranges. 7 USC 2018 (b)(7)(e). The Retailer Operations Division determined there was no credible reason for the Appellant business to have transactions at those high dollar levels given the very minimal stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore considered this to be a strong indication of trafficking. 7 USC 2018 (b)(7)(e).

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

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 example cited earlier clearly shows 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. Information obtained during the FNS store visit on July 15, 2016, shows that the Appellant business offers a very minimal variety and quantity of SNAP eligible staple 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, lottery, alcohol, household products, paper products, pet products, toys, jewelry, hats, and hot food/drinks 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. 7 USC 2018 (b)(7)(e). Since the Appellant

business carries no fresh or frozen unprocessed meats or seafood, minimal processed meats and no processed seafood, no frozen processed meats or seafood, no frozen entrees, no fresh or frozen produce, a limited quantity/variety of canned and packaged staple food items, no bread or rolls, minimal baby foods, no infant formula, and offers no expensive eligible foods, these patterns are deemed to be suspicious. Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a very minimally stocked convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked nearby stores such as the two supermarkets and one super store located within a one mile radius of the business that would offer a greater variety of foods at lower prices. These stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly.

As evidenced by the inventory report and photographs from the FNS store visit, the business is marginally stocked offering a very minimal variety and quantity of staple food items and does not have sufficient eligible food stock to support the volume of SNAP purchases. The FNS store visit report and photographs also noted empty and/or sparsely stocked shelves, dust on the tops of canned/bottled goods, and ice crystals on the ice cream all indicative of a slow turnover of staple food items at the Appellant business. No itemized cash register receipts with accompanying EBT receipts or any other evidence or rationales were furnished to document the legitimacy of these excessively large transactions. Additionally, no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. Appellant's store has a small and cluttered checkout area and does not have shopping carts or hand baskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Accordingly, 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 thus more likely the amounts were contrived. Therefore Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Credit Contentions

Store ownership admits that her business may have allowed credit accounts, a clear violation of SNAP regulations and rules. When she signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer in 2006 and again when she applied for reauthorization in 2012, ownership confirmed she understood and agreed to abide by program rules and regulatory provisions. She agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time and that ownership is responsible for all SNAP transactions at the firm regardless of the amount of time the owner is present at the subject firm. This certification page specifically includes violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Additionally, the SNAP Training Guide for Retailers and the SNAP retailer training video, provided to all retailers upon initial

authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations. These resources are both available in English and in Spanish.

Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. In addition, a retailer is to be assessed a fiscal claim for each transaction determined to be a credit account violation. 7 USC 2018 (b)(7)(e). If the retailer does not provide adequate proof, the determining office shall permanently disqualify the retailer for trafficking.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. 7 USC 2018 (b)(7)(e). FNS requires a level of detail regarding the legitimacy of credit accounts since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. 7 USC 2018 (b)(7)(e).

Since Appellant was unable to provide any evidence substantiating the existence of credit accounts that would explain any of the transactions outlined in the letter of charges, the Retailer Operations Division evaluated the transactions to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed in the Attachments. 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 the Appellant business 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 June 15, 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.

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. 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.

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. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an authorized option.

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. Additionally, there are 29 SNAP authorized stores located within a one mile radius of Appellant’s business including a super store and two supermarkets. The many nearby stores appear readily accessible to SNAP recipients and offer a variety of staple foods comparable to, or better than, those offered by Appellant. Appellant does not carry any unique items or foods that cannot be found at other stores. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store as the normal shopping pattern of such SNAP benefit holders may be altered.

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, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

CONCLUSION

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 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 CMP 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.

/s/

January 24, 2017

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

DATE