

Appellant ceased to accept said benefits. On May 18, 2016, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means an 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 & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. **7 USC 2018 (b)(7)(e)**.

7 U.S.C. § 2021(b)(3)(B) states, *inter alia*:

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

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

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food & Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, *evidence obtained through a transaction report under an electronic benefit transfer system...* (Emphasis added.)

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in §271.2

7 CFR § 271.2 states, *inter alia*:

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

7 CFR §278.6(f)(1) states, *inter alia*:

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

7 CFR §278.6(i) states, *inter alia*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations...

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

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in §278.6(b)(1), the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

Appellant was charged with and subsequently determined to be trafficking SNAP benefits based on an analysis of EBT (electronic benefits transfer) transaction data from December 2015 through February 2016. This involved the following SNAP transaction patterns which are indicative of trafficking:

- A series of 378 SNAP transactions totaling \$8229.00 ended in same-cents values (Attachment 1):
 - A series of 292 SNAP transactions totaling \$5527.00 ended in \$.00.
 - A series of 86 SNAP transactions totaling \$2702 ended in \$.50.
- A series of multiple SNAP transactions totaling \$5099.58 were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- A series of 504 excessively large SNAP transactions totaling \$28,430.19 were debited from recipient accounts (Attachment 3).

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 SNAP-benefit trafficking.

APPELLANT'S CONTENTIONS

In its administrative review request dated May 18, 2016, and in subsequent documentation, Appellant provided the following contentions:

None of the three transaction categories noted in the Charge Letter demonstrate any level of violation by Appellant; the categories are the necessary and logical conclusions to the inventory and customer base the store serves:

1. Prices end in round numbered cents as a result of the store's package deals and large item pricing structure. Nearly all of the firm's SNAP-eligible items are priced in cents-values ending in \$.00. Appellant provides examples of this pricing. The transactions cited in Attachment 1 to the Charge Letter do not materially differ from those that traditionally occur at the store and demonstrate only that prices are rounded. That the Attachment lists only those transactions ending in \$.00 and \$.50 shows that the results are inherently flawed or arbitrarily enforced, as such transactions at the firm existed prior to December 2015 (the beginning month of the analysis period used by the ROD Office). Additionally, the ROD Office has not adequately identified other stores in the area which have the same pricing structure and have a similarly loyal clientele or the bulk packages offered by Appellant. Attachment 1 is useful only if it is compared to like-kind stores; the ROD Office did not do so. Moreover, there are no similarly situated local competitors that have the selection of food at the prices that the Appellant has. All other stores are located outside the immediate geographic area, which would then fail to account for seriously dense population of residents around Appellant's store and the community's individual shopping habits. There are no other stores that offer these types of special grocery packages. Appellant carries a vastly superior selection of SNAP eligible items that other stores do not carry, such as deli sandwiches. Appellant provides affidavits of customers in support thereof. Nearly 1/3 of the store's business comes from its deli, which participants routinely use for sandwiches. Appellant provides photographs of made to order deli sandwiches, fruit and cold cuts with a wider selection than local competition offers. The store is unique compared to others in the area in having a stream of customers who frequent the store due to not having any transportation; for these customers, the store functions as their primary grocery provider and is the most conveniently located. The nearest stores in the immediate vicinity that accept EBT were almost .5 miles away, which is a nine minute walk from Appellant's store. These stores differ materially from the Appellant store in both quality and quantity of food maintained – the firm sells fresh made-to-order deli sandwiches.
2. Transactions that occurred in relatively quick succession are the result of shopping patterns, local residents without vehicles making regular purchases and spending habits of SNAP participants. Florida's SNAP benefits are issued 28 days of the month (Appellant provides a copy of Florida's benefit-allotment issuance-schedule). Out of the 83 sets of transactions in Attachment 2, all occur within the week after the participant received his/her benefits. It is not unreasonable for a customer to purchase a large amount of food at the store, walk it back to a residence and return two hours later to purchase other groceries. As most of Appellant's clientele live in close proximity to the store and do not have transportation, multiple trips are to be expected. Additionally, the firm maintains two shopping carts and eight shopping baskets. Moreover, transactions that were

two hours apart included the purchase of groceries and an additional deli order that did not require a long time to transact: first transactions were purchases of groceries and second transactions were purchases of deli items (sandwiches). There are only a handful of transactions that occurred less than two hours apart over the three month analysis period. More than half of the transactions occurred on separate days and several more than 10 hours apart. It is not unreasonable to believe that a participant who lives nearly on top of the store might visit the store a few times over the course of a few days to split a large grocery trip into manageable segments. It is simply more likely that the neighborhood uses the store as a significant source of primary groceries than that the store is trafficking EBT benefits. Similar to Attachment 1, all other similar stores are located outside the immediate geographic area, which would then fail to account for seriously dense population of residents around Appellant's store and the community's individual shopping habits. There are no other stores that offer these types of special grocery packages. The store is dedicated to retail sales of food items and special grocery packages; nearly all inventory qualifies as eligible items under SNAP regulations. Appellant carries a vastly superior selection of SNAP eligible items that other stores do not carry, such as deli sandwiches. Appellant provides affidavits of customers in support thereof. Nearly 1/3 of the store's business comes from its deli, which participants routinely use for sandwiches. Appellant provides photographs of made to order deli sandwiches, fruit and cold cuts with a wider selection than local competition offers. The store is unique compared to others in the area in having a stream of customers who frequent the store due to not having any transportation; for these customers, the store functions as their primary grocery provider and is the most conveniently located. The nearest stores in the immediate vicinity that accept EBT is almost .5 miles away, which is a nine minute walk from Appellant's store. These stores differ materially from the Appellant store in both quality and quantity of food maintained – the firm sells fresh made-to-order deli sandwiches. The store's customers conform to the traditional patterns of other SNAP participants in that they make large and frequent purchases with a week of receiving benefit allotments. Appellant cites "Analysis of EBT Redemption Patterns" and notes that SNAP participants expend more than half of their benefits within seven days of receiving them and a large portion of households redeem nearly all benefits in the first two weeks of the month. There are several reasons why the participants would attempt to break up their transactions; Appellant notes the following and adds explanations for each:

- i. Balance Speculation: EBT participants do not always know remaining SNAP balances and will sort food into two categories, necessary items and optional items. The initial purchase is comprised of the necessary items and the optional items are purchased next. Food amounts are pre-calculated at the register and then transacted consecutively based on authorization of the original amount.
- ii. Impulse Purchases: the store is organized in a way to encourage such purchases; there is a variety of snack and candy items within a few steps of the register. These items are purchased as secondary transactions and appear throughout Attachment 2, with a large transaction first and a smaller transaction second. Such transactions are legitimate.

- iii. Separate Household Transactions: households apportion benefits among household members; thus transactions are broken apart by household member. Often these are conducted at the same time, during the same visit to the store by two household members. These appear as transaction sets in Attachment 2.
 - iv. Supplemental Shopping Trips: due to lack of access to transportation, many households are limited to the amount of food they can transport in a single trip; thus several trips are needed to carry the food to their residences. Such purchases were almost certainly bulk freezer purchases – heavy items that are cold and require relatively fast transportation home (transactions 414, 415, and 416 and 457, 458 and 459 are examples. 381 and 382 demonstrate this pattern in the extreme, showing two-hour delays between purchases which are representative of the amount of time required to travel to and from the store and make purchases. These are not indicative of any wrongdoing on the part of the store.
3. Transactions cited as large are almost entirely the result of package and bundled deals. The firm also offers a flat fee structure for deli sub sandwiches (Appellant provides a copy of a menu illustrating the pricing). The largest transaction was \$106.50, for which one could reasonably calculate legitimate purchases; this also applies to the entire list of 504 transactions in Attachment 3, without considering the fact that, as a deli, the firm's prices on slices of meat vary. Additionally, participants could have simply purchased a large number of sandwiches. The vast majority of these transactions resulted from the purchase of frozen foods sold in bulk amounts along with deli sandwiches. Lack of counter space becomes irrelevant when dealing with food purchases from the sandwich menu. The store also has an adequate inventory and also orders additional items as necessary and keeps meats in the freezer in the back. There's more than an adequate supply of items on the shelves to fill several bulk purchase orders. Appellant provides copies of photographs of store inventory in support thereof. It is more likely that Attachment 3 transactions are the result of customers taking advantage of the pricing than it is evidence of trafficking. Moreover, the firm would not need multiple registers to ring up predetermined amounts. Similar to Attachment 1 and 2, all other similar stores are located outside the immediate geographic area, which would then fail to account for seriously dense population of residents around Appellant's store and the community's individual shopping habits. There are no other stores that offer these types of special grocery packages. The store is unique compared to others in the area in having a stream of customers who frequent the store due to not having any transportation; for these customers, the store functions as their primary grocery provider and is the most conveniently located. The nearest stores in the immediate vicinity that accept EBT is almost .5 miles away, which is a nine minute walk from Appellant's store. These stores differ materially from the Appellant store in both quality and quantity of food maintained – the firm sells fresh made-to-order deli sandwiches. The store's customers conform to the traditional patterns of other SNAP participants in that they make large and frequent purchases with a week of receiving benefit

allotments. Appellant cites “Analysis of EBT Redemption Patterns” and notes that SNAP participants expend more than half of their benefits within seven days of receiving them and a large portion of households redeem nearly all benefits in the first two weeks of the month.

The preceding may represent only a brief summary of Appellant’s contentions presented in this matter. However, in reaching a decision, full attention and consideration have been given to all contentions presented, including any not specifically recapitulated or referenced herein.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized the Appellant firm as a convenience store on or about October 21, 2015. The record indicates that in reaching a disqualification determination, the ROD Office considered information obtained during a February 20, 2016 store visit conducted by an agency contractor to observe the nature and scope of the firm’s operation, inventory and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit included photographs of the exterior and interior of the store, a store layout diagram and a store inventory survey report which documented the following store size, description, and characteristics:

- The report and photos show that the Appellant firm is located in a suburban residential area and was located in a freestanding building.
- There was no evidence of wholesale business, posted prices, or a separate entrance for wholesale customers at the time of the store visit.
- No optical scanners were used.
- There were no shopping carts or baskets visible for customer use.
- The firm had two cash registers and one credit/debit card reader.
- Hot food was sold (photo 8).
- No dining area present.
- Deli case present.

- There were no meat/seafood bundles/specials or fruit/vegetable boxes offered.
- Estimated 2000 square feet of retail store space
- Night window used.
- Not a delivery route, farmer’s market or specialty food store.
- The firm sold tobacco and tobacco-related products, alcohol, lottery tickets, health and beauty items, paper goods, automotive supplies, cleaning supplies, laundry detergent, DVDs, clothing, baby supplies and other household items.
- Most visible prices were in standard retail variations of \$.x9 (photos 1, 2, 4, 5, 6, 9, 10, 12, 13, 21, 22, 29, 30 and 31).
- The firm maintained a substantial inventory of prepared, ready-to-eat foods, snack items and accessory food items.
- The firm also operated as a gas station (photo 14 and 19).
- Check-out counter space was approximately 1 X 2 feet for each register each surrounded by candy, clothing, ice cream (freezer in front of counter), hot prepared food, tobacco,

- snack foods and lottery tickets (photo 26).
- Deli case and food preparation/kitchen area (photo 32).

The store visit documentation reflected that the firm was a typically-stocked convenience store in all relevant respects and presented the ROD Office with no plausible explanation for the transaction activity at issue.

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

Charge Letter Attachments/Appellant’s Contentions

Charge Letter Attachment 1 and Appellant’s Contentions Under 1 Above:

7 USC 2018 (b)(7)(e). There is no apparent pricing scheme that can account for the transactions in these cents values. Consequently, when there is a disproportional number of same-cents transactions these transaction amounts appear contrived and therefore, in the absence of any compelling rationale to the contrary, indicative of trafficking.

The ROD Office lists various items identified during the store visit as reflecting pricing in standard retail variations of \$.x9; as noted, most visible pricing reflected this same common retail industry practice:

Selected Items with Prices			
Bottle seafood cocktail sauce	\$1.89	Bottle Juice	2 for \$2.00
Bottle Hershey's chocolate syrup	\$1.89	Can sardines	\$1.69
Bottle stawberry syrup	\$1.49	Box Beech-Nut multi-grain cereal	\$7.99
Box seafood breader	\$1.49	12-pack of soda	\$4.99
Box Arm & Hammer baking soda	\$0.89	12-pack of soda	2 for \$8.99
Bottle Juice	\$1.19	Bottle of mustard	\$2.89
Bottle Juice	\$1.69	Box of Hamburger Helper	\$1.89
Bottle Juice	\$1.59	Box macaroni & cheese	\$3.99
Bottle Juice	\$0.99		

Appellant notes that nearly all of the firm’s SNAP eligible items are priced in cents-values ending in \$.00. However, at the time of the contracted visit to the store (February 20, 2016), near the end of the analysis period of December 2015 through February 2016, as noted, most visible prices at the firm were in standard retail variations of \$.x9. **7 USC 2018 (b)(7)(e).** The ROD Office points out as well that the average SNAP purchase in a convenience store in the state of Florida during the analysis period was \$7.01, reflecting that large purchases are not routinely made in such stores; as noted, the firm was found to be a typically-stocked convenience store in all relevant respects. **7 USC 2018 (b)(7)(e).** Appellant’s inventory was that of a typical convenience store/gas station in all relevant respects. **7 USC 2018 (b)(7)(e).** Only three of those items were visible in the retail area of the store on the day of the visit; prices on the pickled eggs were not visible; one jar of pickled sausage was open and individual items were offered for sale from it. The presence of 12-packs of soda was noted but the advertised price was, as seen above, one for \$4.99, two for \$8.99 (the sign read “12 pack soda variety 2 X \$8.99 1 X \$4.99”). No frozen meat, fish or pizza was stocked in the retail area of the store and no signage or flyers advertised same.

Additionally, it is common for convenience stores to sell prepared foods such as sandwiches which either must be heated after the purchase or sold cold and packaged to go. It should be noted that food prepared for immediate or on-site consumption is not eligible for purchase with SNAP benefits; moreover, firms with a majority of sales comprised of such items are not eligible to participate in the SNAP. There was no pricing advertised for sandwiches at the time of the store visit, which, as noted, was near the end of the analysis period. Photographs provided by Appellant reflect signage advertising items priced in variations of \$.00 and \$.50, but that signage likewise was absent at the time of the store visit in February 2016. 7 USC 2018 (b)(7)(e). Appellant's photographs of store inventory reflect that the firm's spare inventory is focused almost entirely on soda products, juice and alcohol. In its reply to the Charge Letter Appellant listed Rico products at 2 for \$4.50 but in Appellant's photographs of signage they are listed at 2 for \$4.00, one for \$2.50. The Maruchan noodles listed price is likewise different from the photographed placards. The meat and cheese price per pound listing was also not visible during the store visit. The photographs also depict the presence of a U-Haul operation collocated with the firm, which similarly was not present at the time of the store visit.

These various anomalies tend to substantially call into question the relevance and veracity of the firm's photographs and documentation of offerings and pricing during the analysis period, most of which appears to have been produced well after the store visit and, correspondingly, well after the analysis period, the relevant period at issue in this case.

Also in reply to the Charge Letter, Appellant provided merchant copies of 56 credit card receipts and of 19 cash register tapes. Credit card receipts for a firm that sells gasoline, alcohol and a number of other non-food/SNAP-ineligible items, cannot constitute compelling evidence of the firm's SNAP activity in any meaningful way. Likewise, cash register tapes may reflect credit/debit card purchases in addition to, or instead of, SNAP purchases. It is noted that eight of the cash register tapes match the amounts and dates of Charge Letter transactions; however, these tapes do not indicate what was purchased and, moreover, included items at prices not found during the store visit or listed on any of Appellant's pricing documentation: \$37.18, \$17.00, \$12.50 and \$8.58.

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

The three supermarkets and large grocery store have a very large selection of food items at much more competitive prices than that offered at typical convenience stores. The red dot on the map represents the location of the subject store. If one widens the area to three miles, there are six superstores, supermarkets and large grocery stores at which SNAP recipients can shop. With such access to retail food outlets, there is no legitimate reason why SNAP recipients would conduct the food purchases indicated in the suspicious patterns. These SNAP recipients, as seen in the following, have access to transportation since they are shopping at these large stores as well as others that require transportation to access.

Agency data shows that 230 households that shopped at the Appellant firm had a transaction at a super store, supermarket or large grocery store the day of, or within one day of, their transaction (s) at the Appellant firm. Thus households which shopped at the subject store had access to and did shop at large grocery stores, supermarkets and superstores, among many other types of authorized stores. This number of households increases to 276 households for those who had a transaction at a

superstore, supermarket or large grocery store within 2 days of a transaction at the Appellant firm. **7 USC 2018 (b)(7)(e)**. This is another indication that households have access to transportation and in fact did shop at other better-stocked and often distant stores. These better-stocked stores ranged from .62 to 50 (fifty) miles from the Appellant store. The ROD Office notes that there were six comparable, typically-stocked convenience stores from just over one-third mile to just over one mile.

7 USC 2018 (b)(7)(e). With inventory that is not comparable to the larger stores, the eligible staple food items can provide no attraction for shoppers to the Appellant firm. Moreover, in this household's travels to various stores, it is virtually certain that it had access to prepared sandwiches. The ROD Office presents a map that shows a subset of the stores this household shopped at using its SNAP card. The proximity of these stores calls into question the need to patronize the Appellant firm in order to obtain a substantial amount of the household's nutritional needs. This household was also traveling between approximately 1.5 and 23 miles to shop at another supermarket and super store and clearly had access to transportation.

Another example presents a similar pattern of a household having transacted more at Appellant's typically-stocked convenience store than at super stores, supermarkets and grocery stores that it patronized. **7 USC 2018 (b)(7)(e)**. These transactions were also followed by a nominal purchase at a supermarket. The ROD Office presents a map which shows this household's location in comparison to the stores where it used its SNAP card. The household residence is over eight miles from the subject store, thus requiring the use of vehicle and traveling past better-stocked stores to conduct implausible transactions at the Appellant store. Shopping at Appellant's typically-stocked convenience store is clearly not a necessity for this household in terms of obtaining its nutritional needs using SNAP benefits; this household's transaction activity is implausible, other than to exchange SNAP benefits for cash.

7 USC 2018 (b)(7)(e). The ROD Office presents a map comparing this household's address to all of the store locations at which it used its SNAP benefits. The household's residence is almost ten miles from the subject store; there is no reason for the purchases at the Appellant firm when the household is also shopping at a supermarket much nearer its residence. Appellant maintained no inventory that a super store, supermarket or grocery store would not also maintain (including prepared sandwiches which are packaged, priced and intended for off-premises and/or home consumption) very likely at more competitive prices. A large selection of eligible food is clearly not what is attracting this household to the Appellant firm, calling into question what Appellant's customers are able to obtain at its typically-stocked convenience store that they could not obtain at the better-stocked stores.

7 USC 2018 (b)(7)(e). To complete the journey in time to conduct these transactions would have required driving at nearly 250 miles per hour. The transaction conducted at the Appellant firm was manually entered into the POS indicating that the card was not been present during the transaction. This is an additional indicator of SNAP benefit trafficking.

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

The ROD Office further noted that the average transaction at the Appellant firm was (\$13.86) more than twice that of the average convenience store (\$6.63) in Seminole County, Florida for the analysis period. Appellant's SNAP redemptions during this period were almost seven times

that of the average convenience store in the state. The ROD Office compared the Appellant firm to five nearby convenience stores and found that Appellant's average SNAP transaction amount and total SNAP redemptions ranged from 2.9 to 2.4, and from 4.6 to 8.7 times, respectively, that of the other comparable firms. Similarly, the number of Appellants same-cents transactions ranged from 27 to 378 times that of the other firms. Three of the other firms conducted *no* same-cents transactions during the analysis period, one conducted seven and one conducted 14, compared to Appellant's 378.

Charge Letter Attachment 2 and Appellant's Contentions Under 2 Above:

Multiple withdrawals were made from the accounts of individual SNAP households within unusually short time frames. There are 39 sets of transactions conducted using 34 different household SNAP accounts. All of the sets of multiple purchases from individual benefit accounts occurred within 24-hour time periods. As explained above, the store visit report does not indicate any compelling reason for customers to consider the Appellant firm a first-choice destination to fulfill large purchases of food, or to make relatively large, multiple purchases at the store within 24 hours. Multiple transactions within a 24 hour period are methods which stores/SNAP recipients use to avoid high dollar transactions that cannot be supported and are typical of trafficking. The agency's extensive experience involving in-person undercover SNAP investigations reflects that the breaking up of large transactions into smaller transactions is a common trafficking tactic and, conversely, in the absence of trafficking, such transactions rarely occur at typically-stocked convenience stores, which the Appellant firm has been clearly documented to closely resemble.

Similar to Attachment 1, the number of Appellant's repetitive transactions (Attachment 2) ranged from 13.8 to 83 times that of five other comparable nearby convenience stores. Four of the other firms conducted *no* repetitive transactions during the analysis period and one conducted six, compared to Appellant's 83.

Appellant notes that customers spend large amounts of SNAP benefits within a week following benefit issuance and cites a FNS-sponsored study as a reference; however, that same study also notes that average transactions are multiple times higher at super stores, supermarkets and grocery stores – in fact the lowest average SNAP transaction routinely occurs in convenience stores (during the analysis period, as noted, the average SNAP transaction in a convenience store in Florida was \$7.01 and in Seminole County was \$6.63). The study also notes that more than three-quarters of SNAP benefits are typically spent at supermarkets and super stores. **7 USC 2018 (b)(7)(e)**. Likewise, while a SNAP customer living near the store may conduct multiple transactions, it is very unlikely that these will be implausibly large. Given the ROD Office's research into Appellant's customer behavior, as noted above, the information obtained during the store visit, and that a great many of these customers in fact do have access to better-stocked supermarkets, super stores and grocery stores, and in fact do shop at these stores often on or about the same time as conducting implausible transactions at the Appellant firm, it is *not* viewed as more likely that the neighborhood utilizes Appellant's typically-stocked convenience store as a primary source of groceries. Appellant's inventory is quite characteristic of a typical convenience store, consisting primarily of single-serving sized snack foods, soda and accessory food items, as is its operating as a prepared food carryout /gas station. The firm's own SNAP application to participate (FNS 252, signed by

Store Owner Jorge Peralta on April 13, 2015) indicates that the firm's sales were at most 50% staple food items, which, combined with the firm's inventory and estimated sales figures classify it squarely within the convenience store category, with which the ROD Office logically compared the Appellant firm.

The shopping carts and baskets Appellant references were not present in the retail area of the store on the day of the visit, which, again, occurred toward the end of the analysis period. Additionally, as noted, prepared ready-to-eat food not intended for home consumption is not an SNAP-eligible item. In the photo provided by Appellant, the cart appeared to likewise be kept in a storage area and not in retail space accessible to customers.

Appellant asserts that first transactions were purchases of groceries and second transactions were purchases of made-to-order deli sandwiches; however, only six (\$31.00, \$75.00, \$42.50, \$64.00, \$21.50 and \$61.50) of the 39 transactions sets in Attachment 2 involved a secondary transaction ending in \$.00 or \$.50, the only possible cents-values given Appellant's stating pricing scheme for deli sandwiches. The \$42.50 transaction noted above was followed the next day by another large transaction for \$59.79. While conceivable, that households would spend from \$61.50 to \$75.00 on made-to-order sandwiches appears tenuous. Nonetheless, only a few Attachment 2 transactions comport with Appellant's rationale. It is again noted for the record that made-to-order prepared food intended for immediate consumption or consumption on the premises are not eligible items under SNAP regulations and rules.

The reasons Appellant cites for the repetitive transactions detailed in Attachment 2, as noted in the foregoing, are typically not applicable to convenience stores, where, again as noted, the average transaction was \$7.01 in the state of Florida (and \$6.63 in Seminole County) during the analysis period. 7 USC 2018 (b)(7)(e). Appellant describes balance speculation, impulse purchases, separate household transactions and supplemental shopping trips, which are shopping traits that should be applicable to all SNAP recipients, yet Appellant is in the position of contending that only Appellant's customers produce large and repetitive transactions, whereas customers shopping at other very similar (virtually identical in fact), convenience stores do not produce them. As noted, convenience store food inventory focuses on inexpensive snack, accessory and convenience food; staple food items sold are typically small numbers of inexpensive items overlooked or forgotten while shopping at a full line supermarket, super store or grocery store. There is no compelling evidence in the record that demonstrates that the Appellant firm operates in any relevant way different than a typical convenience store/gas station. As a rule, such stores are not primary sources of staple food items for SNAP customers, or non-SNAP customers, and the national data collected on all stores reflects this fact.

Appellant notes that same-cents transactions existed at the firm prior to December 2015. 7 USC 2018 (b)(7)(e). Thus this pattern did not begin until November and then continued throughout the analysis period. 7 USC 2018 (b)(7)(e). Nonetheless, the analysis period encompassed four of the five first full months of Appellant's participation in the SNAP; the contention that the ROD Office was in some way arbitrary in identifying the analysis period is not viewed as compelling.

It is noted as well that, as seen in the following examples, Attachment 2 displayed unorthodox repetitive transaction-amount digits, a further indicator that many of these transactions were contrived; examples from the attachment are printed below:

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

Multiple repetitive digits (highlighted above), strongly indicate that many of the SNAP transaction amounts reflected in Attachment 2 were contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid producing repetitive patterns when attempting to create the appearance of normal, near-random transactions. 7 USC 2018 (b)(7)(e). Appellant's descriptions of its business operations and, likewise, the information in the record reflecting these operations do not explain the activity; information in the record regarding the firm's inventory reveals no legitimate basis for SNAP customers' attraction to the firm, there being no superior selection of staple foods, no evidence of a price advantage, no compelling evidence of package, bulk or promotional items, no extensive variety of otherwise unavailable ethnic food items and no evidence of custom or special services rendered. Furthermore, as indicated above, households conducting same-cents, repetitive and/or large transactions at Appellant's firm were also shopping at much better-stocked supermarkets and/or super stores (as well as better or comparably-stocked grocery stores and combination grocery/other stores) on or about the same day, calling into question what Appellant's customers were able to obtain at Appellant's typically-stocked convenience store that they could not obtain at other well-stocked and very likely more competitively-priced super stores, supermarkets and grocery stores.

Charge Letter Attachment 3 and Appellant's Contentions Under 3 Above:

Attachment 3 contains a series of excessively large SNAP transactions debited from recipient accounts. As noted in the foregoing, the average convenience store transaction in Florida during the analysis period was \$7.01. 7 USC 2018 (b)(7)(e). This is very unusual, highly unlikely and accordingly indicative of trafficking.

Also as noted, there was no means by which to convey large numbers of items to the checkout area, as the store visit documentation reflects that there were no shopping carts or baskets available to customers. Checkout counter space was small and would hold only a few items. Of the 504 transactions included in Attachment 3, there were 274 transactions that were equal to or exceeded \$50.00.

Appellant states that even the largest transaction at the firm (\$106.50) could conceivably occur legitimately by adding up a list of food items that could be found at the Appellant firm; while this is acknowledged, the same could be said of any store that maintained at least \$106.50 worth of inventory. The question is, however, how likely are SNAP households to spend large amounts of benefits at Appellant's typically-stocked convenience store, especially when many of these households clearly have access to and in fact shop at much better-stocked and almost certainly more competitively-priced super stores, supermarkets and grocery stores? The record preponderates toward the conclusion that SNAP-benefit trafficking more likely explains the activity detailed in the Charge Letter.

The sale of what appears to be SNAP-ineligible items (sandwiches made to order and not intended for home consumption), may explain some of the transaction activity but cannot conceivably explain it all. Only a portion of the transaction activity contained in the Charge Letter ends in cents-values of \$.00 or \$.50, which would occur if the sales of ineligible items, using Appellant's own price list, could be said to account for it. Deli items (meat and cheese) are purportedly priced only with cents-values of \$.00 and \$.50 as well. As noted, Appellant provided copies of credit/debit receipts and cash register receipts, but this information is inconclusive at best, as noted in the foregoing.

Also as noted, no signage or flyers advertising frozen foods, and no frozen foods (other than individual serving-size ice cream novelty items), were present in the retail area of the store on the day of the store visit. Appellant provides one photograph (of unknown date) of what appears to be seven unmarked boxes (other than with the words, "Keep Refrigerated") stored above numerous six-packs of beer. It is not revealed what said boxes contain, though it is clear the contents are not frozen. There is no further evidence offered of frozen bulk foods offered for sale at the firm. The photos provided also reflect a large amount of soda, juice and alcohol in various cartons and cases. Alcohol of course is not an eligible item and, while convenience stores routinely sell soda and juice, nearly every SNAP-authorized retailer also sells these items and as such this cannot provide a rationale for routinely unorthodox transaction activity at Appellant's typically-stocked convenience store.

Appellant notes that it is more likely that customers are taking advantage of its prices to buy bulk amounts of groceries, though no compelling evidence of a price advantage, or of bulk food items for that matter, is presented. However, as noted, customers conducting implausible transactions at Appellant's typically-stocked convenience store were shopping at much better-stocked super stores, supermarkets and grocery stores on or about the same days.

As discussed in the foregoing, Appellant notes that customers spend large amounts of SNAP benefits within a week following benefit issuance and cites a FNS-sponsored study as a reference; however, that same study also notes that average transactions are multiple times higher at super stores, supermarkets and grocery stores – in fact the lowest average SNAP transaction routinely occurs in convenience stores (during the analysis period, as noted, the average SNAP transaction in a convenience store in Florida was \$7.01 and in Seminole County was \$6.63). The study also notes that more than three-quarters of SNAP benefits are typically spent at supermarkets and super stores. **7 USC 2018 (b)(7)(e)**.

Similar to Attachments 1 and 2, the number of Appellant's excessively large transactions (Attachment 3) ranged from 29.6 to 72 times that of five nearby comparable firms (convenience stores from .4 to 1.06 miles from the Appellant store). Four of the other firms conducted *less than 10* excessively large transactions during the analysis period and one conducted 17, compared to Appellant's 504.

7 USC 2018 (b)(7)(e). Each row is a separate band of transactions in ten dollar increments. In each band, the Appellant firm conducted transactions substantially exceeding the average for a SNAP authorized convenience store in the state, which in fact in many cases were multiple times that of the average convenience store in the state. This is unusual. Based on the Appellant's food inventory, there is no credible reason why the store would have such high numbers of transactions at these dollar levels. 7 USC 2018 (b)(7)(e):

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

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

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

7 USC 2018 (b)(7)(e). In the absence of compelling evidence to the contrary, the precipitous redemption decline following the firm's receipt of the Charge Letter signals a compliance response thereto and a corresponding reduction of violative activity.

Civil Money Penalty

Lastly, once trafficking is established, there is no latitude to impose a lesser sanction, with the exception of civil money penalty. There is provision at 7 CFR §278.6(i) for the imposition of a civil money penalty in lieu of permanent disqualification for trafficking. Appellant was advised of this provision in the SNAP Office's Charge Letter dated March 9, 2016, which also advised that documentation of eligibility for that alternative sanction was to have been provided within a specific time limit. In the absence of any such documentation, a civil money penalty was not imposed in lieu of permanent disqualification by the SNAP Office. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) in that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified (within 10 days of receiving the letter of charges), the firm shall not be eligible for such a penalty." As Appellant did not request such consideration and provided no evidence or information in support thereof, the SNAP Office's decision not to impose a civil money penalty is sustained as appropriate pursuant to 7 CFR §278.6(b)(1); §278.6(b)(2)(ii), §278.6(b)(2)(iii) and §278.6(i).

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby sustained. The decision will become final upon the 30th day following Appellant's receipt of this document.

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 provisions of the Freedom of Information Act (FOIA), 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.

February 3, 2017

DANIEL S. LAY
ADMINISTRATIVE REVIEW OFFICER

DATE