

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

Karibu International Market LLC,

Appellant,

v.

Case Number: C0207159

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against Karibu International Market LLC (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 Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on May 7, 2018.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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

By letter dated March 26, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in September 2017 through February 2018. 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, on April 11, 2018, via telephone, requested an extension of time to respond and was approved for an extension until April 20, 2018. Appellant responded to the charges in a letter submitted via fax on April 20, 2018, which did not request or include documentation in support of a CMP. The Retailer Operations Division notified Appellant by letter dated May 7, 2018, that the firm was permanently disqualified from participation as a SNAP retailer in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter postmarked May 16, 2018, Appellant appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. Subsequent correspondence was received from Appellant.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system."

7 CFR § 278.6(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

7 CFR §278.6(i) states: “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.”

7 CFR §278.6(b)(2)(ii) states: “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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

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 the six month period of September 2017 through February 2018. This involved four patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple purchase transactions were made too rapidly to be credible.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
4. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following 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:

- The store owner denies trafficking and provided store receipts that clearly refute the allegations of trafficking. The firm primarily sells foods specific to the Pittsburgh African Refugee Community from the Democratic Republic of Congo and the Republic of Burundi;
- The store sells Darga (East African dried fish) and Nikeke that are in short supply with an unusually high demand. The majority of customers do not own cars and are transported to the market to purchase these items and other African foods that are in short supply by a Pastor and another member of the community who donate their van

and time to transport community members to and from the market. Community members rapidly buy large amounts of food during any trip to the market explaining the rapid transactions. In some circumstances, the foods are paid for in advance expressly to avoid competition;

- The market still has very high numbers of EBT carrying African Refugees coming to shop in waves at the same times; and,
- As of May 7, 2018, the firm is compliant with the suspension [sic] letter of May 7, 2018. The firm and its owner have always been compliant with the SNAP regulations. The referenced suspension is too drastic and it is not supported by sufficient material evidence. Appellant contends that the USDA failed to provide documents to support the trafficking allegations therefore it is requested the ruling be set aside and the store owner allowed to accept EBT cards. The letter also stated that the firm failed to submit sufficient evidence that it had established, implemented effective compliance policy and program to prevent violation of the SNAP Program [sic].

Appellant submitted a copy of the April 20, 2018, reply to the charge letter that included the five pages of EBT POS receipts in support of these contentions.

ANALYSIS AND FINDINGS

Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm 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

FNS authorized the firm as a small grocery store on January 28, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 19, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a moderately sized store of approximately 1000 SF with limited shelving and cooler space. While the firm had a large store room, it was littered with many empty boxes and miscellaneous items (e.g. a row of car seats), but had extremely limited quantities of stored food. Exterior signage advertised cosmetics, jewelry, DVDs, clothing, and calling cards in addition to ethnic groceries African, Caribbean, and S. American.
- The store stocked a minimal quantity and variety of staple foods that included many ethnic foods, and offered no distinctive services. Many of the ethnic foods were primarily side dishes in Caribbean and West African cuisine.

- The store was notably deficient in the dairy staple food category stocking only dried milk and coconut milk.
- The store visit report and photos showed no shopping carts and only three hand baskets for use by customers making it difficult for them to carry large amounts of food to the checkout.
- No food packages, bundles, case sales, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for bottled water.
- The store did stock bulk sizes of cooking oil, rice, flour, and dried milk, but in very limited quantities.
- The sole checkout area consisted of the top of two glass display cases with each case being approximately 1.5 feet deep and 5.0 feet long. One case top contained the cash register, a POS device/terminal, and two POS PIN pads while there was an electronic scale at the far end of the other case. The configuration of the checkout area and the narrow depth of the counter tops would make it problematic to process large orders.
- The firm had a minimal stock of staple foods with a significant portion of inventory in accessory foods (primarily snacks, beverages, cooking oils, spices, and seasonings) and several types of ineligible items.
- The store had no fresh unprocessed meat/seafood, a minimal selection of frozen unprocessed meat/seafood, a very limited quantity and variety of processed meats and seafood (only canned/dried fish), no sausages, no hot dogs, no jerky, no deli meats, no packaged lunch meats, no bacon, no frozen entrees, no frozen dinners, no eggs, a very limited selection of fresh fruits and vegetables (only limited quantities of potatoes, onions, yucca, and plantains/bananas), no frozen fruits, a moderate selection of frozen vegetables, no 100 percent fruit/vegetable juices, a limited stock of soups, a minimal quantity and variety of canned and packaged staple food items, no fresh milk (only canned dry milk), no deli cheeses, no packaged cheeses, no yogurt, no sour cream, no butter, no margarine, no baby cereals/foods/juices, no infant formula, no macaroni & cheese, no coffee, and a limited number of expensive staple food items.
- Ineligible items included: household products, paper products, health and beauty items, clothing, jewelry, and DVD's while accessory foods included: spices, condiments, snacks, cocoa, tea, cooking oil, and un/carbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were 10:00 AM-8:00 PM Sunday-Tuesday, 10:00 AM-7:00 PM Wednesday-Thursday, 10:00 AM-8:00 PM Friday, and 10:30 AM-8:00 PM Saturday as confirmed by a store employee/owner.
- The employee/owner also stated that the business did not take telephone or online grocery orders, did not delivery groceries, and did not round prices up/down.
- Most food items were priced with the majority of prices ending in .x9 cents as confirmed by comments on the FNS store visit report by the contract reviewer that stated most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type. While the majority of items ended in .x9 cents, there were several other items with prices ending in .00, .45, .50, and .75 cents.

- The FNS store visit report listed the four most expensive items as 20 liter jugs of cooking oil at \$80.00 (four jugs in stock), 5.51 pound cans of Nido Dry Milk at \$36.00 (three cans in stock), 50 pound bags of Semolina Flour at \$35.00 (2 bags in stock), and 20 pound bags of Jasmine Rice at \$22.00 (less than 10 bags in stock). This listing of the most expensive items was provided by a store employee/owner during the store visit.
- The firm was not a WIC vendor.
- The store visit photographs and report showed many empty or marginally stocked shelves and ice crystals on some frozen foods indicative of a slow turnover of stock.
- The previous FNS store visit on January 10, 2015, showed fresh milk, 100 percent fruit juices, eggs, sugar, and canned soups in stock that were not present during the 2017 visit.

Rapid Transactions

This Attachment documents 15 sets of back-to-back transactions made in rapid order at the same POS terminal. The irregular transaction data cited in this Attachment shows all of the transaction sets were conducted 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The same household conducted both of the transactions in only one of the 15 sets. The dollar amount of the second transaction equaled or exceeded 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in all of the 15 sets and only two of the second transactions involved a manually keyed 19 digit EBT card number that would have to be entered in the POS terminal manually and therefore would require additional time.

Appellant contends the rapid transactions were because the majority of customers do not own cars and are transported to the market in groups of seven to 14 people to purchase African foods that are in short supply by a Pastor and another member of the community who donate their van and time to transport community members to and from the market. The community members rapidly buy large amounts of food during any trip to the market explaining the rapid transactions. In some circumstances, the foods are paid for in advance expressly to avoid competition.

While some SNAP recipients may travel to the Appellant firm in a van operated by community members, this explanation does not account for the time required to complete a SNAP transaction. Based on the inventory, pricing structure, and the very limited quantity of expensive items available for purchase at the Appellant firm, it is probable that a transaction in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would most likely consist of more than 10 items. SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the firm has no shopping carts and only three hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involves manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for

eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the “SNAP transaction key” on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount the longer the time period between transactions. The limited counter space as well as manually key-entering lengthy EBT card numbers adds additional time to transactions.

The Appellant firm processed multiple transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, respectively, markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant’s stock could be processed in the times listed in this Attachment given the facilities at the firm. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

Regarding Appellant’s claim that foods are being paid for in advance, the FNS store visit contractor specifically asked the store owner if the firm allowed customers to place online or telephone orders and was told that it did not thereby refuting this claim. Additionally, Appellant provided no explanation of how individuals supposedly making these purchases in advance would pay for them since they have no transportation.

Based on this discussion, as well as the stock and facilities present at the Appellant firm, it is unbelievable that these large dollar value transaction sets could occur in the short periods of time listed if they involved legitimate eligible food purchases. It is therefore more likely that the transactions listed in this Attachment are attributable to trafficking.

Multiple transactions in unusually short time frames

This Attachment documents 92 individual transactions in 45 sets of two or more transactions conducted by 30 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This Review Officer also notes that it is unusual that one out of every three individual transactions ends in .00 cents based on the firm’s pricing structure of most items ending in .x9 cents and inventory. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The dollar amounts of subsequent transactions in each set are substantial and they nearly equal or exceed

the dollar amount of the initial transaction in 13 of the 45 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Two sets are comprised of three individual transactions while the remaining 43 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

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

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of household members/friends shopping together and making separate purchases as more than half of the transaction sets occur over a period 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on Appellant's allegations that the majority of customers do not have transportation and that the firm has waves of refugees shopping at the same time would make it unlikely that this pattern of suspicious purchases would occur if they consisted of legitimate eligible food items. These transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all 45 sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two.

The Retailer Operation Division's analysis of the shopping patterns for households listed in this Attachment shows that they have ready access to transportation as evidenced by their shopping at a variety of larger food stores, both ethnic and traditional, located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked food stores, both ethnic and traditional, would conduct multiple purchases totaling to high dollar values at a minimally stocked store. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the larger stores they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

There may be legitimate reasons why a SNAP household 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Near Depletions of SNAP Benefit Accounts

This Attachment lists a total of 38 EBT transactions in 29 sets of one or more transactions involving 20 households during which the majority, if not all, of the household's monthly SNAP benefits were depleted in a short period of time. There are nine sets comprised of two individual transactions and 20 sets comprised of a single transaction. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Depleting a household's SNAP allotment in one or a few transactions, or within one day, leaving little or no benefits for the rest of the month, is inconsistent with the normal shopping behavior of SNAP benefit households.

SNAP benefits are intended to supplement the food budget for recipient households whose net income is at or below the Federal Poverty Level. A government report on SNAP shopping patterns 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 a period of hours, 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.

The FNS store visit report shows this is a moderate sized store offering a minimal quantity and variety of staple foods items as well as many accessory foods and ineligible items. The store visit report shows that the firm does not have the depth of inventory necessary to support large numbers of high dollar value transactions. The store is also located in an urban area with scheduled fixed route bus service available nearby and there is a supermarket and three medium grocery stores, one carrying similar ethnic foods, located in proximity to the Appellant firm that are better stocked. Nearby stores also include a comparably stocked small grocery store and a convenience store both specializing in African foods. The Retailer Operations Division analysis of shopping patterns for these households shows that they are already regularly shopping at a variety of larger stores, including ethnic food stores, located nearby as well as at a distance. Based on these options, it is unlikely that most SNAP households who are shopping at larger stores that would offer a much greater quantity and variety of food products at lower prices would choose this store as a destination for making large household food purchases.

Appellant failed to provide any explanations for the irregular shopping patterns exhibited by the households listed in this Attachment or why these households would deplete or exhaust their SNAP benefits in a short period of time with some conducting multiple transactions to do so. While SNAP households do tend to make larger purchases in the days immediately following receipt of their monthly allotment, the behavior by households in this Attachment is contrary to the documented shopping patterns of SNAP households, as previously discussed, who typically make just over nine transactions each month consisting of relatively small dollar amounts. 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 high dollar value transactions at a store that offers a minimal selection of staple food items and has no shopping carts 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.

It should be noted that this Attachment is not targeting excessively large transactions per se. It represents a pattern whereby 20 households within the review months, almost depleted, or did deplete their entire monthly SNAP benefit allotments, in a single or a few transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As previously noted, this is not typical shopping behavior exhibited among SNAP recipients.

High Dollar Value Transactions

This Attachment lists 83 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is uncharacteristic for a grocery store of this size offering a minimal stock of staple foods with a limited inventory and calls into question the legitimacy of these transactions. The SNAP transactions listed are also substantially higher than the average SNAP transaction amount of \$15.18 for this store type in Allegheny County. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets, super stores, and other larger stores located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible food items, including ethnic foods, for better prices than customers can find at the Appellant firm. The large dollar transactions remain questionable when considering the proximity of these other stores that would be better shopping options for consumers. Based on their 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 firm, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

The difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Allegheny County small grocery stores during the review months and at the Appellant firm is significant. 5 U.S.C. § 552 (b)(7)(E). A comparison by the Retailer Operations Division of Appellant's SNAP redemptions to that of nearby comparably stocked grocery stores offering African specialty foods shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity. Appellant contends the store sells Darga (East African dried fish) and Nikeke that are in short supply with an unusually high demand and that community members buy large amounts of food during any trip to the market explaining the high dollar value transactions.

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. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger traditional and ethnic food stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

While the Appellant firm does offer some high dollar items such as 20 liter jugs of cooking oil priced at \$80.00, 5.51 pound cans of dry milk priced at \$36.00, and 50 pound bags of semolina flour priced at \$35.00, it also has a very limited depth of stock with only four jugs of cooking oil, three cans of dry milk, and two bags of flour. Furthermore, a review of the store visit inventory and photos show extremely limited food stock in the storeroom as well as very limited quantities of food items in the sales part of the store. Many of the transactions listed in this Attachment occurred on the same day or within a short span of time such as three transactions (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) occurring on the same day followed by a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that the firm also had many smaller dollar value transactions on these days, it is unlikely that the firm had sufficient inventory to support this level of sales and more likely that several of these transactions involved trafficking.

Information obtained during the FNS store visit on December 19, 2017, shows that the Appellant firm offers a minimal quantity and variety of SNAP eligible staple food items, accessory foods, and ineligible items. A significant portion of store inventory is in accessory foods (primarily snacks, beverages, cooking oils, spices, and seasonings) and several types of ineligible items. Since the firm offers no fresh unprocessed meat/seafood, a minimal selection of frozen unprocessed meat/seafood, a very limited quantity and variety of processed meats and seafood (only canned/dried fish), no sausages, no hot dogs, no jerky, no deli meats, no packaged lunch meats, no bacon, no frozen entrees, no frozen dinners, no eggs, a very limited selection of fresh fruits and vegetables (only potatoes, onions, yucca, and plantains/bananas), no frozen fruits, a moderate selection of frozen vegetables, no 100 percent fruit/vegetable juices, a limited stock of soups, a minimal quantity and variety of canned and packaged staple food items, no fresh milk (only canned dry milk), no deli cheeses, no packaged cheeses, no yogurt, no sour cream, no butter, no margarine, no baby cereals/foods/juices, no infant formula, no macaroni & cheese, no coffee, and very few expensive staple food items, these patterns are deemed to be suspicious. The fact that household products, paper products, health and beauty items, clothing, jewelry, and DVD's are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a small grocery store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of traditional and ethnic foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials,

and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and corresponding EBT receipts for the period under review 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. The FNS store visit photographs and report show many empty or marginally stocked shelves and ice crystals on some frozen foods indicative of a slow turnover of stock casting further doubt on the legitimacy of transactions. The firm has a small checkout area and no shopping carts 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 that the amounts were contrived.

The five pages of EBT POS receipts provided by Appellant are not itemized only providing a date, time, and transaction amount. This is the same information listed on the Attachments to the FNS charge letter so the receipts provide no meaningful evidence to support that the transactions were for legitimate eligible foods and not trafficking.

It is further noted that SNAP redemptions at the Appellant business decreased following the store visit on December 19, 2017, and again following receipt of the charge letter on March 27, 2018. The average SNAP transaction dollar amount decreased 22.06 percent from November 2017 to December 2017 and 22.46 percent from March 2018 to April 2018. The volume of SNAP redemptions decreased 31.92 percent from November 2017 to December 2017 and 39.6 percent from March 2018 to April 2018. The number of SNAP transactions decreased 12.64 percent from November 2017 to December 2017 and 22.11 percent from March 2018 to April 2018. A pronounced decrease in SNAP redemptions following the store visit and receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Other Contentions

Regarding Appellant's denial of trafficking, it is important to state that this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates by a preponderance of the evidence, that the disqualification should be reversed. In this case, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If not demonstrated, the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, 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. 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 owner and the firm were charged with trafficking based on a computer analysis of the store's transactions for the months of September 2017 through February 2018. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, 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 and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." 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". SNAP regulations at 7 CFR § 278.6(a) clearly state 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". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. 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 review period. 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 photos from the FNS store visit, a transaction comparison and analysis of like type and larger traditional and ethnic food stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

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 charge letter evidence

trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant did not provide 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 is 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 under existing regulations.

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.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant did not request a trafficking CMP in lieu of a disqualification nor did it make any mention of how the business met any of the four criteria needed to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the timeframe specified in the charge letter. No documentation or other evidence was received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP required by 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division presented a case that Appellant has likely trafficked in SNAP benefits. Their 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 consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in four 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 and larger 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. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to 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, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

ROBERT T. DEEGAN
Administrative Review Officer

August 28, 2018