

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

Kate Grocery,

Appellant,

v.

Case Number: C0208096

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a permanent disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Kate Grocery by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Kate Grocery on June 21, 2018.

AUTHORITY

7 U.S.C. 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.

CASE CHRONOLOGY

In a letter dated May 1, 2018, the Retailer Operations Division informed the Appellant that Kate Grocery was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In responses to the Retailer Operations Division dated May 10, 2018 and May 14, 2018, the Appellant, through counsel, replied to the charges herein claiming that a store employee, who was terminated upon receiving the Charge Letter, conducted the erroneous SNAP transactions. The Appellant had never been charged with SNAP violations prior to receiving the Charge

Letter. The Appellant also requested the imposition of a civil money penalty in lieu of permanent SNAP disqualification as it has met the four criteria for eligibility for such penalty.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated June 21, 2018, informing the Appellant that Kate Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked July 3, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated July 13, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from October 2017 through March 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts within a set period of time; and
- There were excessively large purchase transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT’S CONTENTIONS

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

In the replies to the Charge Letter and in the administrative review request postmarked July 3, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- Kate Grocery is managed by one person and it has no other employees. It is a small grocery store selling groceries, beer, and lottery tickets and it offers wiring services of monies overseas.
- The Appellant has owned the store for two years and its responsibilities with the business do not involve customer contact, making sales, or attending to the cash register. The Appellant makes deposits and orders merchandise and is, of course, responsible for the operations of this small store.
- The Appellant, upon receipt of the Charge Letter, sat down with the employee who conducted the violative SNAP transactions to review the cited charges and to review the SNAP rules. The responsible employee was terminated by the Appellant. Since receiving the Charge Letter the Appellant has been in the store daily to ascertain that SNAP violations do not occur again.
- The Appellant disagrees that the transactions outlined in Attachment 2 of the Charge Letter constitute excessively large purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) but the Charge Letter Attachment 1 transactions involved multiple transactions from the same household within the same day, and those in large part total excessively large amounts.
- The Appellant had never been charged with any prior violations of the SNAP regulations or any other food and nutrition program.
- A SNAP disqualification will impose a hardship on SNAP customers as Kate Grocery is located in a low income neighborhood and the store fulfills an important need for the community.
- The Appellant requests that FNS impose a civil money penalty in lieu of a permanent SNAP disqualification of Kate Grocery as it has met the four criteria for eligibility of this penalty. In support of its contentions, the Appellant provided profit and loss statements for Kate Grocery.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Kate Grocery as a convenience store on July 8, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 1, 2018 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 400 square feet in size and does not have additional food storage outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- Had an optical scanner;
- The available checkout area space was limited and the checkout counter was obstructed by an ice cream freezer;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$x.x9 and/or \$x.00;
- The four most expensive foods items in stock were Similac infant formula at \$17.99 per 12 ounces; Rico rice at \$13.99 per 20 pounds; Mazola corn oil at \$8.99 per 96 ounces; and Nido powder at \$7.99 per 14.1 ounces;
- Telephone orders are not taken and delivery is not available to customers;
- There were no fresh or frozen meats, poultry, or seafood;
- There was a deli area that sold meats and cheeses by the pound and prepared and hot food. However, there were no signs or menu boards posted in the store advertising the prices of these foods. The fresh vegetables, cheese, and margarine stored in the small deli counter were also used in the preparation of prepared and hot food;
- There was a small grill and hot plate to heat foods;
- Frozen foods included ice cream;
- There were units of canned fish, eggs, canned/potted meat, hot dogs, sausage, and meat jerky;
- Dairy included milk, cheese, margarine, and yogurt;
- Infant foods included infant formula, fruits/vegetables, and cereal;

- A moderate variety and amount of fresh produce including potatoes, onions, green peppers, lettuce, lemons, bananas, oranges, apples, tomatoes, limes, and plantains;
- Other staple foods available for purchase included such items as juice, pasta, rice, bread, cereal, baking mix, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, coffee, spices, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty items, paper products, household cleaning supplies, toys, infant diapers, household items, lottery tickets, automotive supplies, charcoal, pet food, and alcohol.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why Kate Grocery's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

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

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant's contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This Charge Letter Attachment documents 22 sets of transactions (53 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The Appellant argues that it disagrees that the transactions outlined in Attachment 2 of the Charge Letter constitute excessively large purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) but the Charge Letter Attachment 1 transactions involved multiple transactions from the same household within the same day, and those in large part total excessively large amounts.

Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the Charge Letter 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 the Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Kate Grocery multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, fourth, and fifth transactions in each set are too large to consist of forgotten items.

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

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, Agency mapping systems indicate that there are 48 SNAP authorized retailers located within a 1.0 mile radius of Kate Grocery that can meet the nutritional needs of SNAP customers including 4 combination grocery stores, 37 convenience stores, 5 small grocery stores, 1 medium grocery store, and 1 super store. Many of these area SNAP stores are of a comparable size or larger than Kate Grocery and offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned above, SNAP customers that shopped at Kate Grocery during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Kate Grocery's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Kate Grocery or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions (Charge Letter Attachment 2)

This Charge Letter Attachment lists 202 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in Fairfield County, Connecticut. During the review period, the average transaction amount for a convenience store in Fairfield County, Connecticut was \$9.14. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors. These large transaction amounts are also not consistent with the store's inventory. There were no fresh or frozen meats, poultry, or seafood. Most of the food products in Kate Grocery consisted of accessory food items such as candy and soda and inexpensive staple foods such as canned and packaged goods. The frequency of high dollar purchases in the the review period calls into question the legitimacy of these transactions.

The Appellant argues that it disagrees that the transactions outlined in Attachment 2 of the Charge Letter constitute excessively large purchases (**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) but the Charge Letter Attachment 1 transactions involved multiple transactions from the same household within the same day, and those in large part total excessively large amounts.

The FNS store visit report and photos of February 1, 2018 show that Kate Grocery offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, a limited amount and variety of canned fruits and vegetables, and no frozen fruits or vegetables. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 48 SNAP authorized retailers located within a 1.0 mile radius of Kate Grocery that can meet the nutritional needs of SNAP customers. Many of these area SNAP stores are of a comparable size or larger than Kate Grocery and offer a comparable or greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Kate Grocery have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While Kate Grocery does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered.

The record shows that the Retailer Operations Division compared the Appellant firm, a convenience store, to other convenience stores located in Fairfield County, Connecticut. During the review period, Kate Grocery's SNAP dollar volume and transaction count were considerably higher as compared to other convenience stores in Fairfield County.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, Kate Grocery conducted considerably more suspicious SNAP transactions (i.e., multiple transactions made from individual benefit accounts

within a set period of time and excessively large purchase transactions made from recipient accounts) as compared to six comparable authorized convenience stores located less than one mile from the subject firm. These are indicators that trafficking is more likely than not occurring at Kate Grocery.

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

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Corrective Action

The Appellant argues that upon receipt of the Charge Letter, it sat down with the employee who conducted the violative SNAP transactions to review the cited charges and to review the SNAP rules. The responsible employee was terminated by the Appellant. Since receiving the Charge Letter the Appellant has been in the store daily to ascertain that SNAP violations do not occur again.

With regard to the Appellant's arguments, it is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

First Time Violator

The Appellant argues that it had never been charged with any prior violations of the SNAP regulations or any other food and nutrition program. However, a record of participation in the SNAP with no previously documented violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking.

The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

Hardship on Customers

The Appellant argues that a SNAP disqualification will impose a hardship on SNAP customers as Kate Grocery is located in a low income neighborhood and the store fulfills an important need for the community. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

CIVIL MONEY PENALTY

The Appellant requests that FNS impose a civil money penalty in lieu of a permanent SNAP disqualification of Kate Grocery as it has met the four criteria for eligibility of this penalty. In support of its contentions, the Appellant provided profit and loss statements for Kate Grocery.

In the May 1, 2018 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) 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**, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to **extend the time** within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

5 U.S.C. § 552 (b)(7)(E) and **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Therefore, the Retailer Operations Division's decision not to impose a civil money penalty in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

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

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

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy

LORIE L. CONNEEN
Administrative Review Officer

November 13, 2018