

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

Kwik Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0218765

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of Kwik Stop (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Kwik Stop.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from November 2018 through April 2019. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- There were a large number of EBT manual transactions from SNAP household accounts.
- The firm conducted EBT transactions that were large based on observed store characteristics and recorded food stock.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Kwik Stop for SNAP participation as a convenience store on March 3, 2017. In a letter dated July 10, 2019, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of November 2018 and April 2019. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made and supporting documentation submitted within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a letter faxed on July 17, 2019, the Appellant owner responded to the charges, denying that he or any of his employees have ever engaged in trafficking violations. The owner stated that he conducted his own investigation, including reviewing camera footage and EBT transaction receipts after receipt of the charge letter. Upon reviewing this information, the owner stated that no foul play was discovered. The Appellant further stated that an influx of construction workers employed on very large construction projects in the area has resulted in purchases of cold food, cold subs, cases of water, snacks, and all types of cold drinks. The Appellant stated that there have been multiple occasions where construction workers would visit the store and purchase cases of water, Gatorade or other food items.

In support of its response, the Appellant submitted faxed copies of 23 photographs showing the construction projects in the area.

After reviewing the Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated July 25, 2019. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the 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.

In a letter postmarked August 5, 2019, the Appellant, now through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[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, in part:

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

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.

7 CFR § 271.2 states, in part:

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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter

shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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

7 CFR § 278.6(b)(2)(iii) states:

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.

7 CFR § 278.6(i) states, in part:

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...

APPELLANT'S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- FNS's permanent disqualification of Kwik Stop was improper because no trafficking violations ever occurred.
- The increase in SNAP transactions during the six-month review period is indicative of an overall growth in business, which is due to billion-dollar construction projects within a half-mile radius of the store, which has led to an influx of construction workers occupying the surrounding area and frequenting the store for food and water.
- The firm saw a gradual increase in business over a 24-month period from August 2017 to July 2019. The spike in business begins around January and February 2018, which is the same time that the construction projects began. Logically, when there is an increase in overall sales, there will be an increase in EBT transactions, especially when most of the new customers are low-income construction workers.

- Clearly, it is not trafficking but an overall growth in business that is driving the firm’s increase in EBT transactions and transaction amounts, for which the Appellant should not be punished but celebrated.
- Regarding the allegation that EBT transaction amounts were too large “based on the observed store characteristics and recorded food stock,” such an allegation demonstrates that FNS is misinformed about the firm’s physical characteristics, food items for sale, and monthly inventory.
- The store has the characteristics and SNAP-eligible food items to generate large transaction amounts. The firm is a 2,700 foot store with two cash registers, a fully operational deli bar, and a parking lot that can hold up to approximately 35 vehicles. The store sells numerous items that, when purchased together, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), especially when customers purchase food for their co-workers, friends, and family. For example the firm sells the following items:
 - Case of Monster energy drink for \$42.99
 - Case of 32 oz. Powerade or Gatorade for \$24.99
 - Case of 20 oz. Powerade or Gatorade for 19.99
 - Large sandwich for \$7.99
 - Small sandwich for \$5.99
 - Meat and poultry for \$11.99 to \$13.79 per pound
 - Cheese for \$11.99 to \$12.99 per pound
 - Case of water for \$5.49
 - 12-pack of soda for \$5.99
 - Beef jerky for \$7.99
 - Various other groceries for \$2.99 to \$6.99
- The above list shows that Kwik stop is closer to being described as a full-service grocery store as opposed to being a place to purchase cigarettes and beer.
- The only competitor near the construction site is a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) one mile north of Kwik Stop, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and Kwik Stop are the only retail stores within a half-mile radius of the construction sites, which further evidences the reason for the increase in business.
- The firm has seen a drastic hike in inventory costs to meet the growing demand for its products. The firm has already (as of August 2019) purchased over 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in inventory for 2019. In comparison, the store purchased approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in total inventory for all of 2018. The firm is spending around 5 U.S.C. § 552 (b)(6) & (b)(7)(C) more per month for inventory in 2019 than it did for 2018.
- Because it is clear that the increase in EBT transactions and transaction amounts are a direct result of the firm’s gradual growth in business as opposed to trafficking, the determination of permanent disqualification must be reversed.
- The increase in EBT transactions and growth in business is a direct result of the multi-billion dollar construction projects within a half-mile radius of the firm.
- These massive construction projects have consumed the South Tampa area since the beginning of 2018. This includes large real estate developments and a two-mile highway extension for the Lee Roy Selmon Expressway on West Gandy Boulevard. These projects collectively require the dispatch of hundreds, if not thousands of construction workers.

- As a result of this construction, the Appellant’s business has grown exponentially, which is the sole reason for the hike in EBT transactions and transaction amounts.
- The Appellant has never violated a SNAP regulation in the past and will never violate one in the future. FNS has mistaken growth for trafficking.

In support of its contentions, the Appellant has submitted a large amount of documentation, which includes the following:

- Monthly financial spreadsheets for 2017, 2018, and 2019
- Listing of inventory costs for 2018 and 2019
- Summary of inventory costs for 2018 and 2019
- Price list for 94 different food products
- Property information from the Hillsborough County Property Appraiser
- Google Maps view of the area showing the location of Kwik Stop 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in relation to two large construction sites
- Seventeen undated photographs of the store’s interior
- Twenty-two photographs of the area surrounding the store, including the parking lot and construction areas
- Copies of three Internet articles: one from a real estate investment company and two from local media sources describing the construction projects in the South Tampa area.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all evidence and contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm’s EBT transactions, but also information obtained from an April 22, 2019, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Kwik Stop is a convenience store, roughly 2,500 square feet in size, operating in the city of Tampa, Hillsborough County, Florida.
- At the time of the contractor’s visit, the firm did not have any shopping carts or hand-held

baskets for customer use, which is not unusual for stores of this size. Customers shopping in convenience stores generally purchase only as much food as they can carry in their arms.

- The store visit photographs show two cash registers and agency records reflect the use of two EBT point-of-sale terminals for SNAP purchases. It appears that the firm uses an optical scanner to ring up items on the cash register.
- The store's staple food stock is sufficient for program eligibility in each of the four staple food categories, and is typical of a convenience store that has a heavy emphasis on snack foods and drinks.
- The report indicates that the store sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including alcoholic beverages, tobacco products, lottery tickets, automotive products, cleaning supplies, and other miscellaneous household merchandise.
- The checkout area includes two small countertop spaces. The checkout area is not suitable for conducting large or rapid transactions as there is little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end with a cents-value of 9, such as \$2.29, \$3.99, etc. The report also states that the firm does not round transaction totals up or down at checkout.
- There is no indication from the report that the firm has special food packages for sale or that items are sold in bulk, with the exception of a few cases of water and Gatorade. According to the report, the most expensive food items available for purchase include a 4-count pack of Red Bull energy drink for \$8.49; a 3.25-ounce bag of beef jerky for \$7.49; an 11.5-ounce package of coffee for \$6.49; and a 12-pack of soda for \$5.49. The contractor did not specify the prices for cases of water or Gatorade.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to supplement their overall dietary needs. There was no indication that SNAP households would be inclined to regularly visit Kwik Stop to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets and the availability of larger grocery stores in the area, including three full-line supermarkets and superstores within two miles of the store. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 14 sets of transactions (37 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a convenience store carrying largely snack foods and having no shopping carts or baskets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Such repetitive transaction sets and dollar amounts at a convenience store like Kwik Stop are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation.

The Appellant has not offered any specific contentions related to Attachment 1 except to claim that the firm's SNAP transaction activity and average transaction size has increased as a result of an influx of construction projects in the immediate area, which has led to a surge in business from low-income construction workers employed on the projects. This contention will be addressed in detail later in this document. Suffice it to say that this review does not find the Appellant's contentions regarding the construction projects to be a sufficient explanation for the unusual transaction patterns found in Attachment 1; neither has the Appellant offered any evidence to demonstrate what transpired between Kwik Stop and its customers at the point of sale. Accordingly, it is reasonable for this review to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 2: A large number of manually entered EBT transactions were made from the accounts of SNAP households. This attachment lists 37 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

It is noted that all of the manually entered transactions from Attachment 2 occurred on one of the firm's two EBT point-of-sale machines 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Additionally, 35 of the 37 transactions occurred from three different SNAP households (accounts ending in 5 U.S.C. § 552 (b)(6) & (b)(7)(C)). It should be noted that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) processed many transactions in which the EBT card was successfully swiped, so this does not appear to be a case of a malfunctioning machine. Additionally, there is no evidence that the EBT cards were defective, as they were successfully swiped at other stores throughout the review period.

Unfortunately, the Appellant neither offered explanation for these transactions nor submitted evidence to prove that the transactions were legitimate. Without some kind of explanation or documentation, this review is left to conclude that the transactions were likely the result of trafficking.

Charge Letter Attachment 3: The store conducted EBT transactions that were large based on observed store characteristics and recorded food stock. This attachment lists 89 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Florida. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Florida was \$7.00. In Hillsborough County, the average was even lower, at just \$6.76 per transaction. The average transaction in Attachment 3 is more than seven times larger than the average purchase amount for this store type.

Given that the Appellant firm has a modest inventory of staple foods as well as other SNAP-eligible items, such as snacks and drinks, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the constricted checkout area, the lack of shopping carts and baskets, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that Kwik Stop is a typical convenience store without any shopping carts or baskets, this review finds it unlikely that every transaction in Attachment 3 was a legitimate purchase of eligible food. Simply put, it is highly unusual for customers to repeatedly spend such large amounts of SNAP benefits at a convenience store like Kwik Stop.

It is notable that many of the transactions listed in Attachment 3 were made by SNAP households who shopped at much larger supermarkets and superstores 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at Kwik Stop. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is difficult for this review to comprehend what was available at Kwik Stop that would not have been available at a superstore, where overall inventory and variety are substantially greater and where prices are likely lower. It is conceivable that a household would visit Kwik Stop to supplement purchases made at the larger stores, but in each example above, the household spent substantially more at Kwik Stop – a standard convenience store with typical inventory. Inexplicable behavior such as this is often indicative of trafficking.

The Appellant contends that the agency's allegation that EBT transaction amounts were too large demonstrates that FNS is misinformed about the firm's physical characteristics, food items for sale, and monthly inventory. According to the Appellant, the store has similar characteristics to a full-service grocery store and sells numerous items that, when purchased together, could generate a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C), especially when customers purchase food for their co-workers, friends, and family.

Unfortunately, the Appellant's contentions are not supported by compelling evidence. For instance, there is no evidence that when customers shop at Kwik Mart, they are also purchasing food for co-workers, friends, and family. Additionally, none of the Appellant's evidence shows what was actually purchased during the transactions in question and does not prove that the transactions were legitimate purchases of eligible food. The Appellant has also offered no relevant inventory evidence. The financial statements and cost-of-inventory spreadsheets provide no insight into the food items purchased by the firm. While the firm's photographs show that the store offers cases of water or Gatorade, there is no indication how frequently these items are purchased by the store's customers or how often the Appellant places inventory orders for such items.

This review does not doubt that Kwik Stop sells eligible food items and conducts legitimate SNAP transactions. There is no evidence that this has ever been questioned. There is also no evidence that FNS is concerned by the increase in the overall number of transactions. But when unusually large transactions form patterns that are substantially different from comparable stores in the area, further evidence from the Appellant is warranted to verify that there is not something more, such as trafficking or other program violations, taking place. In this case, the Appellant has not offered persuasive evidence, such as cash register receipts or other accounting and inventory records, to better explain what occurred between the customer and the clerk at the cash register during the specific transactions listed in the charge letter.

The transactions identified in the charge letter are highly irregular and substantially different from comparable stores in the area. In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately the Appellant's evidence does not meet this standard, and thus, does not prove by a preponderance of the evidence that trafficking did not take place during the review period.

Nearby Construction Projects

The key contention in this case is a claim that workers from nearby construction projects were the main source of increased business at the store during the six month period in question. The Appellant contends that these massive projects in South Tampa have brought to the area hundreds, if not thousands, of largely low-income construction workers who visit the store and purchase large volumes of snack foods, sandwiches, water, and other cold drinks. According to the Appellant, it is logical that when there is an increase in overall sales, there will be an increase in EBT transactions. The Appellant contends that the firm should not be punished for its increase in business, but celebrated.

The Appellant further contends that 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is Kwik Stop's only competitor near the construction sites. According to the Appellant, Kwik Stop and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) – located one mile north of Kwik Stop – are the only retail stores within a half-mile radius of the construction sites, which is further evidence of the increase in business.

The construction projects include large real estate developments and a two-mile highway extension for the Lee Roy Selmon Expressway on West Gandy Boulevard. The Appellant claims that its business has grown exponentially as a result of this construction and is the sole reason for the hike in EBT transactions and transaction amounts.

Unfortunately, there are a number of holes in the Appellant's arguments. For instance, it stands to reason that if the construction projects impacted Kwik Stop with an increase in foot traffic and average transaction size, then other similar-sized, similarly-stocked stores in the vicinity would have comparable transaction patterns. However, that is not the case. Consider the following chart, which compares the transaction activity at Kwik Mart with seven other SNAP-authorized stores in the area:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

This graphic illustrates that Kwik Stop had more unusually large transactions than the other seven stores combined. Kwik Stop also had more suspicious transaction sets as listed in Attachment 1 than any of the comparison stores. And Kwik Stop was the only firm with large manual transactions. Considering that the nearby comparable store have similar inventory and in some cases more SNAP business than Kwik Stop, the transaction patterns at the Appellant firm stand out as particularly unusual.

The chart above further disproves the Appellant's claim that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the only competitor store near the construction zones. In fact, Stores 4, 5, 6, and 7 are situated very close together on West Gandy Boulevard and are significantly closer to the construction sites than Kwik Stop. The Appellant further misidentified where 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is located. It is not on West Shore Blvd, but is rather on West Gandy Blvd., near three other convenience stores.

In short, this review does not find the Appellant's claims regarding the impact of the construction sites to be persuasive in any respect. Had other authorized stores in the area exhibited similar patterns over the same period of time, the Appellant's arguments might have carried more weight.

Because it is not clear that the increase in EBT transactions and transaction amounts are a direct result of the firm's growth in business as opposed to trafficking, the determination of permanent disqualification must be sustained.

It is important to restate here that in an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. Despite being presented with a specific list of questionable transactions, the Appellant has offered no persuasive evidence, such as cash register receipts or other evidence from the point of sale, to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. Insinuating a link between construction zones and unusual transaction patterns does not provide a valid basis for this review to reverse the agency's disqualification determination.

Civil Money Penalty

The Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it replied to the charge letter and there is no evidence that the Appellant

submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify Kwik Stop from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, Kwik Stop, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 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.

JON YORGASON
Administrative Review Officer

November 18, 2019