

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

La Favorita Market,

Appellant,

v.

Case Number: C0191668

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 La Favorita Market 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 La Favorita Market on August 30, 2016.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated August 16, 2016, the Retailer Operations Division informed the Appellant that his firm 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."

The Appellant did not reply to the charges outlined in the August 16, 2016 Charge Letter. After considering the evidence in the case, the Retailer Operations Division issued a Determination Letter dated August 30, 2016, informing the Appellant that La Favorita Market 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 September 8, 2016, the Appellant 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 September 15, 2016.

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.

5 U.S.C. § 552 (b)(7)(E).

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

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

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

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food 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 § 278.2(f) states, *inter alia*:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

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 January 2016 through June 2016. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions that ended in a same cents value;
- There were multiple transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

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 Appellant's review request postmarked September 8, 2016, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at La Favorita Market;
- The questionable SNAP transactions listed in the Charge Letter Attachments are the result of La Favorita Market accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments; and
- The Appellant is requesting that FNS forgive his mistake and allow La

Favorita Market to continue to participate in the SNAP.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Phone numbers of three different persons who the Appellant contests can verify his claim of credit extension; and
- Five separate letters from one individual to whom the Appellant contests that he has extended credit to in the past. The letters were dated June 19, 2016, July 18, 2016, July 22, 2016, August 17, 2016, and February 9, 2017.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized La Favorita Market as a convenience store on September 11, 2007. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 16, 2016 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:

- La Favorita Market is a convenience store that is approximately 2,500 square feet in size and it does not have a storage area outside of the public view;
- La Favorita Market is located in a suburban, commercial area of Los Angeles, California;
- There were no shopping carts or hand-held baskets available for customer use;
- La Favorita Market has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- Many of the store shelves are sparsely stocked with food items;
- La Favorita Market had a minimal food stock that is typical of convenience stores and it offers customers a minimal variety and amount of eligible staple foods for sale;
- Many of the canned goods stocked at La Favorita Market are dusty and dirty indicating that they are not sold on a regular or

- consistent basis;
- There were no meat/seafood specials or bundles that might sell for high prices;
- La Favorita Market is not a WIC Program vendor and it does not stock any infant formula or infant foods;
- The store does not stock any high priced food items;
- It does not appear from the store visit observations that La Favorita Market extends credit to store customers;
- There were no signs posted in the store nor were there any flyers advertising the availability of bulk foods offered at a discounted rate to include food combination deals/specials;
- La Favorita Market does not have a food preparation area or kitchen and it does not prepare and sell hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation;
- La Favorita Market did not sell deli meats and cheeses by the pound;
- The checkout counter has a limited space, it is cluttered with miscellaneous items, and does not provide a space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- La Favorita Market did not stock any fresh or frozen meats, poultry, or seafood items;
- Other meat items available for sale included a minimal variety and quantity of canned fish, canned shellfish, canned/potted meat, packaged lunch meat/hot dogs, eggs, and meat jerky;
- La Favorita Market stocked a very minimal variety and amount of fresh produce items to include spring onions, tomatoes, and limes;
- The store did not stock any frozen fruits or vegetables;
- The only frozen food item stocked at La Favorita Market is ice cream novelties;
- Other staple foods available for purchase included such items as 100% juice, pasta, rice, cakes/pastries, canned fruits and canned vegetables, milk, cheese, snack foods, etc.;
- Much of the remaining food stock consisted of accessory foods such as candy and gum, carbonated and non-carbonated drinks, tea bags, coffee, vegetable oil, etc.; and
- La Favorita Market stocked a good supply of ineligible nonfood items such as tobacco products, alcohol, lottery tickets, hardware items, pet food, paper products, household cleaning supplies, laundry detergent, gift items, sunglasses, purses, health and beauty aids, etc.

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.

Denial of Trafficking Allegations

Regarding the Appellant’s contention that he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is 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.

Credit Transactions

The Appellant contends that the questionable SNAP transactions listed in the Charge Letter Attachments are the result of La Favorita Market accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. When a retailer claims it maintains credit

accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant provided a statement to the Administrative Review Officer (ARO) attesting that he did not have any proof to offer FNS that the questionable SNAP transactions conducted during the review period were the result of credit extension to SNAP customers as he threw away all of the credit slips/notes once the customer's credit balance was paid off. The Appellant provided the ARO with the names of three individuals with their telephone numbers to which the Appellant contends can verify that La Favorita Market has extended credit to SNAP customers in the past. In addition, the Appellant provided the ARO with copies of five separate letters from one individual who requested that the Appellant provide him/her with a few food items and cigarettes while the individual was incarcerated. Only one of the letters was dated during the review period. The person indicated that he/she could pay the Appellant for the food items requested at a later date using his/her SNAP benefits. FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to indicate that La Favorita Market had kept records of credit extension to SNAP customers via actual credit slips/notes other than his statement of such;
- The Appellant did not provide FNS with the names of the SNAP customers to whom credit had been extended to during the review period. In addition, the Appellant did not provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended;
- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- No documents were provided to validate whether the alleged credit was paid off by cash, credit card or SNAP benefits;
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that would validate that the credit extended to each SNAP customer was done so during the six month review period;

- No documentation was provided that would validate the amount of credit that was extended to each customer during the six month review period; and
- As only one of the customer letters provided to the ARO was dated during the review period and due to the fact that the customer was incarcerated at the time that the letter was written, there is no way to validate if the customer was extended credit during the review period, what individual food items were purchased on credit, and the total amount of the food items purchased on credit. In addition, there is no way to validate if/when the customer paid off the credit that was supposedly extended to him/her.

In conclusion, although La Favorita Market may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support the Appellant's contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Unusual Number of Transactions Ending in a Same Cents Value (Charge Letter Attachment 1)

This Attachment lists 84 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant contends that the unusual number of transactions that end in a same cents value are the result of La Favorita Market accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant's contention, as noted above, the information submitted by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

Based on the store visit report, La Favorita Market's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the large dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Consequently when there are a disproportional amount of transactions that end in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular purchases ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) cited in Charge

Letter Attachment 1 are more likely than not the result of the store trafficking in SNAP benefits.

Multiple Transactions Made from Individual Household Accounts in Unusually Short Timeframes (Charge Letter Attachment 2)

This Attachment documents 24 sets of transactions (53 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These transactions were conducted by 13 different SNAP households. Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that the multiple transactions made by individual household accounts in unusually short timeframes are the result of La Favorita Market accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in the Charge Letter are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. La Favorita Market is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood items, no frozen fruits or vegetables, a minimal amount and variety of fresh produce items, and it lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store.

5 U.S.C. § 552 (b)(7)(E). In addition, La Favorita Market does not stock any high priced food items so the majority of food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at La Favorita Market 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 La Favorita Market, where the eligible 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, there are 50 SNAP authorized retailers located within a 0.8 mile radius of La Favorita Market that can meet the nutritional needs of SNAP customers. As mentioned above, SNAP customers who shopped at La Favorita Market during the six month 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 La Favorita Market'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 La Favorita Market 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 3)

Attachment 3 of the Charge Letter cites 261 EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of La Favorita Market accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

The store visit report and photos show that La Favorita Market was stocked with a limited quantity and variety of staple foods as it stocked no fresh or frozen meats, poultry, or seafood items, no frozen fruits or vegetables, a minimal amount and variety of fresh produce items, and a minimal quantity and variety of processed meats. The inventory report and photos also show that the subject store stocked no expensive staple foods indicating that there are no expensive eligible foods in stock that would account for these large amounts as well as showing the

store has limited checkout counter space, no optical scanner, 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 50 SNAP authorized retailers located within a 0.8 mile radius of La Favorita Market. Several of these stores are larger than La Favorita Market and offer a 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 all of the households shopping at La Favorita Market have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and supermarkets, located a few miles distance from the Appellant's location. While La Favorita Market does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of 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 Appellant did not submit any vendor invoices to FNS for foods purchased for La Favorita Market during the six month review period in order to help substantiate that La Favorita Market purchased enough staple food items to cover/explain the SNAP transactions that occurred at the store during the review period. Therefore, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that La Favorita Market had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as an unusual number of transactions ending in a same cents value 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no frozen meats/seafood and no fresh meats/seafood, very limited fresh produce, and no frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at La Favorita Market to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four SNAP households identified in the Charge Letter to analyze their shopping patterns at La Favorita Market 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 La Favorita Market

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 minimal 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 the average transaction amount 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 offering of no shopping carts or 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 3 are more likely than not the result of trafficking in SNAP benefits.

Second Chance Requested

The Appellant is requesting that FNS forgive his mistake and allow La Favorita Market to continue to participate in the SNAP. However, 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.

CIVIL MONEY PENALTY

As previously indicated, the August 30, 2016 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated August 16, 2016 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

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 La Favorita Market 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, 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.

LORIE L. CONNEEN
Administrative Review Officer

November 2, 2017