

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

**La Milena Mini Market,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0220605**

**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 Milena Mini Market (Appellant) 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 Milena Mini Market on October 4, 2019.

**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 September 17, 2019, the Retailer Operations Division informed the Appellant that La Milena Mini Market 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 letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant did not respond to the charges outlined in the September 17, 2019 Charge Letter within the required 10 calendar days of receipt of the Charge Letter.

After considering the evidence in the case, the Retailer Operations Division issued a Determination Letter dated October 4, 2019, informing the Appellant that La Milena Mini Market was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked October 9, 2019, 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 November 15, 2019.

### **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 January 2019 through June 2019. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were a large number of transactions ending in a same cents value;
- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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 request for administrative review, the Appellant stated the following summarized contentions, in relevant part:

- The owner is a new business owner and is very new to all of this. The owner did not intentionally do anything that could lead to losing the store's SNAP permit.
- The owner is a single mom and the Appellant is the only source of income. She has worked very hard to keep the business going including now adding time to better understand a better process to running the business, including but not limited to, the way customers are charged.
- With regard to the transactions documented in Charge Letter Attachment 1, there are a lot of items in the store that have set prices not including cents. This was done to a lot of items to make it easier to charge customers. Overall, the owner found it to be easier for her in order to remember certain prices, etc. The owner has never seen anything wrong with having set prices that do not include any cents.
- With regard to the transactions documented in Charge Letter Attachment 2, this business was a purchase of an existing business that was open for more than 25 years. Although there are other stores near to the Appellant, the Appellant store is a very family/friends oriented store. The Appellant has customers of all ages, especially older customers that come by. Sometimes the store is more like a hangout, where customers come to play the lottery and have their morning, afternoon, and night time coffee just to get out of their home and see others and socialize. The shopping center is big and it has several different businesses that are used by customers such as insurance office, a tax office, a travel agency, clothing stores, a tobacco shop, a barber, a beautician, a cell phone store, a pool and boat shop, a car wash, and a small child school. It is possible that some customers

purchase items and then return to the store later to purchase something else that was forgotten earlier.

- With regard to the transactions documented in Charge Letter Attachment 3, although the Appellant is a mini market, it does carry a full meat market and has a lot of unique items that other markets may not have. The Appellant carries vegetables and fruits. The Appellant also carries a deli section of products like bacon, ham, hot dogs, milk, eggs, cheese and more. All of these items are convenience items. If customers are at home and have forgotten bacon or butter, why should they get in their car to drive so far when the Appellant store is on the corner and can solve their immediate problem. Although the Appellant firm is not the cheapest, customers like to pay for convenience. The Appellant also carries sacks of rice, juices by the box, fish, and certain meats, water and soda cases, ice, cold sandwiches, frozen foods, ice cream, oils and more.

In support of these contentions, the Appellant submitted 13 black and white photos (which were grainy/not clear) of current food stock.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized La Milena Mini Market as a convenience store on August 30, 2018. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 9, 2019 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 2,400 square feet in size and approximately 50 square feet of additional storage outside of public view that stocked predominantly drinks and non-food items;
- Two shopping carts, one of which was used to store inventory for the store, and three hand-held baskets available for customer use;
- One cash register for food purchases and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One checkout counter area with limited check-out counter space;
- No optical scanners;
- 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, \$x.50, and/or \$x.00;
- Transaction totals were not rounded up or down at the checkout counter;

- Telephone and on-line orders were not taken and delivery was not offered;
- The four most expensive food items in stock were Indian basmati rice at \$17.99 per 15 pounds (2 units in stock); Canilla rice at \$9.99 per 20 pounds (2 units in stock); Riceland rice at \$7.99 per 20 pounds (3 units in stock); and Gerber Good Start Protect at \$7.99 per 12.4 ounces;
- Had partially/scantily stocked shelves;
- Had dusty/dirty canned foods;
- No fresh or frozen meats, poultry, or seafood;
- Had a kitchen in which hot foods (hot pastries and toast) were prepared and sold;
- Had a deli area in which prepared, made-to-order sandwiches were prepared and sold;
- Deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, canned fish, and eggs;
- Dairy included milk (cow and coconut varieties), butter, and cheese;
- Fresh produce consisted of a few (each) onions, tomatoes, bananas, limes, and plantains;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, loaf bread, corn meal, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, vegetable oil, coffee, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, automotive supplies, alcohol, lottery tickets, candles, gaming machines, and housewares.

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. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food 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 the Appellant firm'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.

Stores caught in trafficking violations consistently display particular characteristics or patterns of transactions, including those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that the Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Same Cents Transactions (Charge Letter Attachment 1)**

This Charge Letter Attachment documents transactions ending in same cents values. A review of the store visit record indicates that the store did not promote any specials that could explain the pattern of large numbers of transactions ending in these values. This Attachment includes 102 transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant contends that there are a lot of items in the store that have set prices not including cents. This was done to a lot of items to make it easier to charge customers. Overall, the owner found it to be easier for her in order to remember certain prices, etc. The owner has never seen anything wrong with having set prices that do not include any cents.

A number of households whose transactions were cited in other Attachments to the Charge Letter also consistently made transactions that ended in same cents values. Transactions appearing in more than one Attachment to the Charge Letter are more suspicious as they display multiple patterns common to trafficking transactions.

The SNAP regulations do not prohibit SNAP transactions that end in a same cents number value. However, an interesting characteristic of questionable transactions is that many of them end in a same cents value. Sets of repeating digits are highly unorthodox and do not regularly occur in legitimate transactions; such transaction structuring is a common hallmark of trafficking activity. In the absence of any compelling rationale to the contrary, these patterns strongly indicate that the firm is trafficking in SNAP benefits.

### **5 U.S.C. § 552 (b)(7)(E).**

The Appellant contends that there are a lot of items in the store that have set prices not including cents. In support of these contentions, the Appellant submitted 13 black and white photos of current stock. The photos were grainy/not clear. Five of the photos included typed prices next to them to include: (1) Drinks priced at \$10.00 per pack; Ice cream priced at \$5.00 to \$6.00; Sodas at \$6.00 per 12 pack; An unidentifiable food item (the photo was too grainy/not clear enough to identify the food) at \$18.00 per pack; and Drinks at \$30.00 per 40 pack.

However, the store visit record indicates that the Appellant did not promote any specials nor did it have a special pricing structure, such as prices ending in \$x.50 or \$x.00, that could explain the pattern of large numbers of transactions ending in these values. In addition, the store visit record indicates that transaction totals are not rounded up or down at the checkout counter. It is also important to note that the four most expensive food items noted during the store visit end in price variations of \$x.99.

Furthermore, the EBT card is like a credit card and there is no need for recipients to worry about a cent value or to round purchases for the purpose of budgeting benefits. Additionally, when rounding prices either the SNAP recipient will pay more for a purchase rounded up or the retailer will lose money if purchases are consistently rounded down to an even amount. Also, for the purpose of keeping track of any remaining balance, every SNAP transaction receipt has the recipient's ending balance printed on the receipt or the recipient can request a "balance inquiry" at any time to determine the balance.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. Patterns of transactions ending in same cents amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals with identical cents values during the review period strains the credibility of the Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As the Appellant has offered no rational explanation or supporting documentation for why such patterns might exist, it is reasonable to conclude that these same cents transactions are the result of trafficking.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 2)**

This Charge Letter Attachment documents 24 sets of transactions (52 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were completed by 17 different SNAP households. 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 contends that this business was a purchase of an existing business that was open for more than 25 years. Although there are other stores near to the Appellant, the Appellant store is a very family/friends oriented store. The Appellant has customers of all ages, especially older customers that come by. Sometimes the store is more like a hangout, where customers come to play the lottery and have their morning, afternoon, and night time coffee just to get out of their home and see others and socialize. The shopping center is big and it has several different businesses that are used by customers such as insurance office, a tax office, a travel agency, clothing stores, a tobacco shop, a barber, a beautician, a cell phone store, a pool and boat shop, a car wash, and a small child school. It is possible that some customers purchase items and then return to the store later to purchase something else that was forgotten earlier.

With regard to the Appellant's contentions, although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, 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.

These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, a household returning later in the day and making separate purchases, or of a household making a separate purchase to check their balance followed by another transaction. The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at La Milena Mini Market 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 and third transactions in each set are too large to consist of forgotten items. In addition to the store's limited checkout space which is unsuitable for large transactions, La Milena Mini Market has only two shopping carts (one of which was used to store inventory for the store) and three hand-held baskets available to customers for transporting food within the store.

It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 25 SNAP authorized retailers, including 4 supermarkets and 2 super stores, located within a 1.0 mile radius of La Milena Mini Market that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than La Milena Mini Market and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at La Milena Mini Market 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 or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

**5 U.S.C. § 552 (b)(7)(E)**.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 2 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

### **Excessively Large Transactions (Charge Letter Attachment 3)**

This Charge Letter Attachment documents 217 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as La Milena Mini Market to have purchases like those included in this Attachment to the Charge Letter.

The Appellant contends that although it is a mini market, it does carry a full meat market and has a lot of unique items that other markets may not have. The Appellant carries vegetables and fruits. The Appellant also carries a deli section of products like bacon, ham, hot dogs, milk, eggs, cheese and more. All of these items are convenience items. If customers are at home and have forgotten bacon or butter, why should they get in their car to drive so far when the Appellant store is on the corner and can solve their immediate problem. Although the Appellant firm is not the cheapest, customers like to pay for convenience. The Appellant also carries sacks of rice, juices by the box, fish, and certain meats, water and soda cases, ice, cold sandwiches, frozen foods, ice cream, oils and more. In support of these contentions, the Appellant submitted 13 black and white photos of current food stock. The photos were grainy/not clear.

However, the FNS store visit report and photos of July 9, 2019 show that La Milena Mini Market offers a moderate stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, no frozen staple foods, only a minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store had partially/scantily stocked shelves and dusty/dirty canned foods indicating a slow turnover in these items. Many of the food items documented in the Appellant's photos, including yogurt, bacon, hot dogs/lunch meat, and frozen foods/vegetables, were not in stock at the time of the store visit. The Appellant's photos appear to be contrived in an effort to support its contentions.

While five of the Appellant's food stock photos noted prices of \$5.00 to \$30.00, the store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts. The four most expensive food items in stock were Indian basmati rice at \$17.99 per 15 pounds (only 2 units in stock); Canilla rice at \$9.99 per 20 pounds (only 2 units in stock); Riceland rice at \$7.99 per 20 pounds (only 3 units in stock); and Gerber Good Start Protect at \$7.99 per 12.4 ounces. The store visit observations also showed that the store has limited checkout counter space and a limited number of shopping carts and hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without a sufficient number of these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The store visit report and photos also indicate that there were 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 evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. 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 Appellant store's inventory.

The average SNAP transaction included in this Attachment **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The large transactions documented in this Attachment are not consistent with a convenience store in Miami Dade County, Florida. During the review period, the average transaction amount for a convenience store in Miami Dade County was \$8.57. The average transaction in this Attachment is more than eight (8) times larger than the average purchase amount for this store type. 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 Appellant store's inventory. Most of the food products in La Milena Mini Market consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods.

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

As noted previously, there are 25 SNAP authorized retailers, including 4 supermarkets and 2 super stores, located within a 1.0 mile radius of La Milena Mini Market that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than La Milena Mini 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 the majority of the households shopping at La Milena Mini Market 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 La Milena Mini Market 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.

**5 U.S.C. § 552 (b)(7)(E).**

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the

firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

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 a sufficient number 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 a sufficient number 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 this Attachment are more likely than not the result of trafficking in SNAP benefits.

### **Financial Hardship**

The Appellant contends that the owner is a single mom and the store is the only source of income. She has worked very hard to keep the business going including now adding time to better understand a better process to running the business, including but not limited to, the way customers are charged. However, 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 possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **CIVIL MONEY PENALTY**

As previously indicated, the October 4, 2019 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated September 17, 2019 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 Milena Mini 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, 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

January 14, 2020