

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

**Lela Grocery Corp,**

**Appellant,**

**v.**

**Case Number: C0205517**

**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 Lela Grocery Corp. (hereinafter “Lela Grocery”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Lela Grocery on May 8, 2018.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated February 15, 2018, the Retailer Operations Division informed the Appellant that Lela Grocery was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270–282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a written correspondence received by the Retailer Operations Division on March 1, 2018, the Appellant denied the trafficking allegations and provided various explanations for the questionable SNAP transactions that were outlined in the February 15, 2018 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 8, 2018, informing the Appellant that Lela Grocery was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked May 19, 2018, 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 May 24, 2018.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

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

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

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

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

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

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

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

### **SUMMARY OF CHARGES**

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

- There were multiple purchase 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 reply to the Charge Letter and in the administrative review request postmarked May 19, 2018, the Appellant stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Lela Grocery.
- With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant cannot explain what happened since it was in August and it cannot recall specific transactions. Sometimes customers, after they pay and realize that they still have funds on their EBT card, add some other items which they thought they could not buy because they are not sure if they have enough funds in their account. When customers receive their benefits, they rush to the store to buy a couple of times a day because they have been waiting for their benefits to buy food. They usually spend their entire monthly benefits in a couple of weeks or a few days because they go through the end of the month with less food.
- With regard to the excessively large purchase transactions, the largest amount purchased at one time 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The first week after receiving their monthly SNAP benefits allotments, SNAP customers fill up their kitchen cabinets with snacks, juices, cereals and/or whatever the can for their children. A couple of bags with those items can add up to over \$100.00, especially if they buy infant formula. Lela Grocery is not a WIC vendor; therefore, SNAP customers purchase infant formula with SNAP benefits and cash. SNAP customers also buy 10 pound bags of rice which cost \$11.79 and a gallon of oil which also costs \$11.99, and a tin of powdered milk for \$21.99. The store stocks a popular cereal called Nestum® Cerelac which costs \$7.49. A few of the store's SNAP customers buy three or four cans for their children, not to mention juices, cookies and chips as well. When buying food for a few children, the bill can add up. The store's SNAP customers also purchase cold cuts to prepare sandwiches at home, canned beans, pancake mix and syrup, canned fish, spices, herbs, etc. In addition, the store is located in an area where there are a lot of African families with many children in their households. Powdered cereal, powdered milk, infant formula, and cereal boxes are a big part of their purchases and those items add up to more than \$90.00. They also buy juices by the gallon, milk, chips and cookies for their families. Lela Grocery's prices are a little higher than a supermarket because of the lack of space. The Appellant cannot buy truckloads of foods so it purchases food items a couple of times a week. The store's customers do not have a supermarket nearby to make their purchases. If they did, they would also spend their benefits in one day.

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

- 30 color photos showing food products stocked at Lela Grocery.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Lela Grocery as a small grocery store on July 3, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 18, 2017 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 900 square feet in size and it does not have a storage area/room outside of public view. The store has a small chest freezer; however, the food stored in the freezer is not for individual purchase by store customers. The food is used in the preparation of hot and/or cold ready-to-eat foods that are intended for immediate consumption and are not for purchase by store customers;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- No meat/seafood specials or fruit and vegetable bundles that might sell for high prices;
- Not a WIC Program vendor; however, the store stocks a small amount and variety of infant formula, infant fruits/vegetables/juices and infant cereal;
- Does not stock any specialty or ethnic foods;
- Does not take telephone, online, or other types of orders for food;
- Does not offer delivery to customers;
- Per the store visit observations, the four most expensive staple food items in stock are: Enfamil® infant formula at \$22.99 per 12.4 ounce can; deli meat at \$8.99 per pound; vegetable oil at \$8.99 per 96 fluid ounces; and rice at \$8.79 per 10 pound bag;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals;
- Limited checkout counter area and it is surrounded by a Plexiglas barrier, has many miscellaneous items stocked there, and is obstructed by an ice cream freezer. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meats, poultry, or seafood;

- A deli case/section in which deli meats and cheeses are sold by the pound. There is a menu board advertising the varieties of these food items available for sale and their prices;
- Other meat items include canned/potted meat, canned fish, sausage, and eggs;
- A kitchen in which hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold. A menu board is posted in the store advertising the following: Breakfast/Lunch: Egg and cheese; Bacon, egg, and cheese; Sausage, egg, and cheese; Pastrami; Salami; Roast beef; Ham; Cold Sandwiches (Available on a roll or Hero): Roast beef; Pastrami; Ham; Ovengold turkey; Honey turkey; Sausalito turkey; and Genoa salami. There is also a steamtable stocked with hot ready-to-eat foods for self-service with a sign posted next to it advertising the prices;
- A moderate amount and variety of fresh produce;
- No frozen fruits or vegetables;
- Other staple foods available for purchase include such items as milk, margarine, yogurt, soup, canned fruits, canned vegetables, pasta, rice, cereal, flour, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as carbonated and non-carbonated drinks, candy, condiments, coffee, vegetable oil, and spices/seasonings; and
- Ineligible nonfood items include health and beauty items, paper products, household items, household cleaning supplies, clothing, over-the-counter medications, cell phone accessories, alcohol, pet food, candles, etc.

This documentation reflects that the firm is a moderately stocked small grocery store in all relevant respects. It is worth noting that the average SNAP purchase in a small grocery store in Bronx County, New York (the county in which Lela Grocery is located) during the analysis period was \$9.36, reflecting that large purchases are not routinely made in such stores.

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 Charges**

Regarding the Appellant's contention that it 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.

### **Repeat Transactions by the Same Household**

Charge Letter Attachment 1 lists 24 transaction sets (52 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for small grocery stores in Bronx County during the review period. 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 with regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Appellant cannot explain what happened since it was in August and it cannot recall specific transactions. Sometimes customers, after they pay and realize that they still have funds on their EBT card, add some other items which they thought they could not buy because they are not sure if they have enough funds in their account. When customers receive their benefits, they rush to the store to buy a couple of times a day because they have been waiting for their benefits to buy food. They usually spend their entire monthly benefits in a couple of weeks or a few days because they go through the end of the month with less food. However, the Appellant's contentions are not supported by available evidence.

The Appellant contends that sometimes customers, after they pay and realize that they still have funds on their EBT card, add some other items which they thought they could not buy because they are not sure if they have enough funds in their account. However, the EBT point-of-sale machine is programmed to permit immediate inquiries without having to first process a purchase. There is also a toll-free 800 telephone number that can be called to find out account balances. Therefore, it is not necessary for customers to make a purchase just to find out what they have on balance in their SNAP benefit accounts. In addition, it appears that a few of the questionable consecutive transaction sets cited were conducted at the beginning of the month, in some cases on the very day of the recipients' benefits were replenished and plentiful. It would be unusual

for recipients to be concerned about their account balances with so many benefit dollars at hand. It is also important to note that the majority of the questionable consecutive transaction sets cited in Charge Letter Attachment 1 were conducted several hours apart. As such, it does not appear that these transactions are the result of SNAP customers attempting to determine the balance on their EBT cards by making two or three different purchases over several hours.

The Appellant also contends that when customers receive their benefits, they rush to the store to buy a couple of times a day because they have been waiting for their benefits to buy food. They usually spend their entire monthly benefits in a couple of weeks or a few days because they go through the end of the month with less food. With regard to the Appellant's contention, a June 2006 study entitled "An Analysis of Food Stamp Benefit Redemption Patterns" prepared by USDA FNS, indicates that typical EBT purchases are small (about 71 percent **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) and SNAP benefits are spent throughout a given month--63 percent of SNAP households use more than half of their benefits in the first week after issuance and over half (56 percent) use more than 90 percent of the household benefits within two weeks after issuance. The study also found that "Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases" while "less than 6 percent never shopped at supermarkets."

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. SNAP participants use their SNAP benefits quickly and have little left at the end of a month. In fact, most households (63 percent) use more than half of their benefits within the first week of issuance and over half (56 percent) use more than 90 percent of their benefits within two weeks of issuance. About 80 percent of all SNAP benefits are redeemed within two weeks of issuance and 97 percent are redeemed by the end of the month.

However, the USDA study also indicates that most SNAP benefits are redeemed at supermarkets. Supermarkets generally provide the widest range of high-quality foods at reasonable prices. Although access to supermarkets may be limited in some areas, most low-income shoppers redeem most of their SNAP benefits in supermarkets. Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases. Large and small grocery stores accounted for about 8 to 10 percent of EBT transactions and 4 to 6 percent of the total value of benefits redeemed. Over 46 percent of SNAP households shopped exclusively at supermarkets; less than 6 percent never shopped at supermarkets.

The results found in this study directly contradict the transactions cited in this Attachment. It is very unusual for EBT recipients to redeem a majority or all of the household's monthly benefits in a single transaction or in a single day. Most households make small transactions and redeem their benefits throughout the month. In addition, most recipients redeem a majority of their household benefits at supermarkets and very few avoid supermarkets all together. Considering that the subject store is a small grocery store with moderate food stock, the transactions cited in Charge Letter Attachment 1 are highly unusual.

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 this Charge Letter Attachment 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. Lela Grocery is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a moderate variety and amount of fresh produce, and 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 that are not offered at other authorized SNAP stores in the area. It is irregular for small grocery stores to have purchases such as those cited, especially when Lela Grocery stocks only a few 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 Lela Grocery are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Lela Grocery, where the eligible food stock is moderate, 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 227 SNAP authorized retailers of a comparable size or larger that are located within a 1.0 mile radius of Lela Grocery that can meet the nutritional needs of SNAP customers. These authorized stores include 163 small grocery stores, 24 medium grocery stores, 9 large grocery stores, 20 supermarkets, and 11 super stores. Several of these authorized SNAP stores are larger than Lela Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Lela Grocery 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 Lela Grocery's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

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

### **Excessively Large Purchase Transactions**

Charge Letter Attachment 2 lists 158 SNAP 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 Lela Grocery would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that with regard to the excessively large purchase transactions, the largest amount purchased at one time 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The first week after receiving their monthly SNAP benefits allotments, SNAP customers fill up their kitchen cabinets with snacks, juices, cereals and/or whatever the can for their children. A couple of bags with those items can add up to over \$100.00, especially if they buy infant formula. Lela Grocery is not a WIC vendor; therefore, SNAP customers purchase expensive infant formula with SNAP benefits and cash. SNAP customers also buy 10 pound bags of rice which cost \$11.79 and a gallon of oil which also costs \$11.99 and a tin of powdered milk for \$21.99. The store stocks a popular cereal called Nestum® Cerelac which costs \$7.49. A few of the store's SNAP customers buy three or four cans for their children, not to mention juices, cookies and chips as well. When buying food for a few children, the bill can add up. The store's SNAP customers also purchase cold cuts to prepare sandwiches at home, canned beans, pancake mix and syrup, canned fish, spices, herbs, etc. In addition, the store is located in an area where there are a lot of African families with many children in their households. Powdered cereal, powdered milk, infant formula, and cereal boxes are a big part of their purchases and those items add up to more than \$90.00. They also buy juices by the gallon, milk, chips and cookies for their families. Lela Grocery's prices are a little higher than a supermarket because of the lack of space. The Appellant cannot buy truckloads of foods so it purchases food items a couple of times a week. The store's customers do not have a supermarket nearby to make their purchases. If they did, they would also spend their benefits in one day. In support of its contentions, the Appellant provided FNS with 30 color photos showing food products stocked at Lela Grocery. However, the Appellant's contentions are unsubstantiated.

The Appellant contends that the largest amount purchased at one time 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and that the first week after receiving their monthly SNAP benefits allotments, SNAP customers fill up their kitchen cabinets with snacks, juices, cereals and/or whatever the can for their children. A couple of bags with those items can add up to over \$100.00. As mentioned previously, a June 2006 study prepared by USDA FNS entitled "An Analysis of Food Stamp Benefit Redemption Patterns" indicates that SNAP 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The study also found that, "Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases" while "less than 6 percent never shopped at supermarkets." 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are a good indicator that trafficking of SNAP benefits took place at the store during the review period.

The Appellant contends that Lela Grocery is not a WIC vendor; therefore, SNAP customers purchase expensive infant formula with SNAP benefits and cash. The contracted Reviewer noted during the December 18, 2017 store visit that the most expensive food item (costing \$5.00 and above) stocked at Lela Grocery is infant formula which costs \$22.99 per 12.4 ounce can. However, the store visit observations also indicate that Lela Grocery stocked only one variety of infant formula in minimal amounts. It is also important to note that the majority of households that qualify for WIC Program benefits also qualify and are SNAP recipients. In most cases, these households utilize their WIC Program benefits to purchase infant formula and infant foods in lieu of their SNAP benefits in order to save their SNAP benefits for other needed food items. Therefore, is not likely that SNAP customers are purchasing large amounts of infant formula at a

small grocery store like Lela Grocery that is not a WIC vendor and charges higher prices (as confirmed by the Appellant) than area supermarkets and super stores.

The Appellant contends that SNAP customers also buy 10 pound bags of rice which cost \$11.79 and a gallon of oil which also costs \$11.99, and a tin of powdered milk for \$21.99. The store stocks a popular cereal called Nestum® Cerelac which costs \$7.49. A few of the store's SNAP customers buy three or four cans for their children, not to mention juices, cookies and chips as well. When buying food for a few children, the bill can add up. The store's SNAP customers also purchase cold cuts to prepare sandwiches at home, canned beans, pancake mix and syrup, canned fish, spices, herbs, etc. In addition, the store is located in an area where there are a lot of African families with many children in their households. Powdered cereal, powdered milk, infant formula, and cereal boxes are a big part of their purchases and those items add up to more than \$90.00. They also buy juices by the gallon, milk, chips and cookies for their families. Lela Grocery's prices are a little higher than a supermarket because of the lack of space. The Appellant cannot buy truckloads of foods so it purchases food items a couple of times a week.

With regard to the Appellant's contentions, the Reviewer noted during the December 18, 2017 store visit that the four most expensive food items (costing \$5.00 and above) stocked at Lela Grocery are Enfamil® infant formula at \$22.99 per 12.4 ounce can, deli meat at \$8.99 per pound, vegetable oil at \$8.99 per 96 fluid ounces, and rice at \$8.79 per 10 pound bag. In addition, it was noted that the store does not offer meat/seafood specials or fruit and vegetable bundles that might sell for high prices. As indicated in the Appellant's photos of food products stocked at Lela Grocery and the store visit observations, Lela Grocery is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a moderate variety and amount of fresh produce, and 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 that are not offered at other authorized SNAP stores in the area. In fact, the Appellant itself noted that as a small grocery store the food prices at Lela Grocery are higher than the prices of similar food products at traditional grocery stores. Considering that SNAP benefit allotments are calculated to provide households with a bare minimum of food security, it is unreasonable to believe that households would spend a large majority of their monthly benefit allotments at a moderately stocked small grocery store like Lela Grocery.

The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has a limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 227 SNAP authorized retailers of a comparable size or larger that are located within a 1.0 mile radius of Lela Grocery that can meet the nutritional needs of SNAP customers. These authorized stores include 163 small grocery stores, 24 medium grocery stores, 9 large grocery stores, 20 supermarkets, and 11 super stores. Several of these authorized SNAP

stores are larger than Lela Grocery and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. In fact, there are three authorized supermarkets located within 0.26 miles of 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 Lela Grocery have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellant's location. While Lela Grocery 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 that are not available at other authorized stores in the area.

The SNAP transaction activity of Lela Grocery during the review period was compared to the SNAP transaction activity of two nearby authorized small grocery stores which stock a similar or superior amount and variety of staple foods at comparable or better prices as compared to the subject store. The comparison indicates that Lela Grocery had a considerably higher Total Purchase Transaction Count and Dollar Volume amount than the two comparable small grocery stores. Lela Grocery also had a higher Total Transaction Count and Dollar Volume amount when compared to the store type average in Bronx County, New York during the review period.

The Appellant did not provide FNS with its vendor invoices for the foods that were purchased for Lela Grocery during the six month review period to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred during the review period. Therefore, FNS could not conduct an invoice analysis. It is important to note that even if the Appellant had provided FNS with all of its vendor invoices for the review period and the invoices indicated that the Appellant 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 rapid and consecutive transactions by individuals during the same store visit or in a single day.

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 moderate variety of stock in the store, no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, a moderate variety and amount of fresh produce, 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 little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Lela Grocery to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a small grocery 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 five SNAP households identified in the Charge Letter to analyze their shopping patterns at Lela Grocery compared to their shopping patterns at other SNAP authorized stores.

Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Lela Grocery often 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery store with moderate staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

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

### **CIVIL MONEY PENALTY**

As previously indicated, the May 8, 2018 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 February 15, 2018 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 Lela Grocery Corp. 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

August 20, 2018