

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

Louis GN Convenience Store,

Appellant,

v.

Case Number: C0200001

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 Louis GN Convenience Store (hereinafter “Louis GN”) 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 Louis GN on September 20, 2017.

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 6, 2017, the Retailer Operations Division informed the Appellant that Louis GN 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 letter received by the Retailer Operations Division on September 19, 2017, the Appellant denied the trafficking allegations and provided explanations for the questionable SNAP transactions that were outlined in the September 6, 2017 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated September 20, 2017, informing the Appellant that Louis GN 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 27, 2017, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated October 6, 2017.

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 August 2016 through January 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 September 27, 2017 and a subsequent correspondence postmarked October 31, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Louis GN.
- The charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program. At no time did FNS personnel visit Louis GN to conduct an in-store investigation and assess the firm including the types of products being sold and the type of clientele it caters to.
- With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, these transactions occurred 16 times over 166 days which means that they occurred less than once every ten days and they represented less than one percent of all of the SNAP transactions that were conducted during the review period. Sometimes customers conduct their grocery shopping at Louis GN and then they return to make a second purchase because they have forgotten an item they wished to purchase in their initial purchase.
- With regard to the excessively large purchase transactions, approximately 80 percent of Louis GN's customers are Haitian with over 60 percent of them being EBT recipients. Louis GN is not a standard convenience store that stocks only standard convenience store goods such as canned goods, snacks, produce, milk, eggs, and carbonated drinks. The store also carries Haitian cultural goods including conch meat, king fish steaks, red snapper, and large sacks of wheat and rice as well as organic foods like dried fish, dried mushrooms, and other organic foods. The Haitian foods are expensive. For example, a 10 pound box of conch meat costs \$49.99, a 10 pound case of red snapper costs \$47.99, and a 40 pound bag of jasmine rice costs \$41.99. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The excessively large purchase transactions occurred from the 6th to the 15th of each review month after FNS replenished customers' SNAP benefits resulting in these customers making purchases of expensive food items at Louis GN.
- The questionable SNAP transactions listed in the Charge Letter Attachments rarely ended in \$x.00 or \$x.50 and are, therefore, consistent with the random transaction amounts of normal food purchases.
- The Appellant requests that FNS reverse its decision to permanently disqualify Louis GN from the SNAP and allow the store to continue to participate in the program.

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

- A signed affidavit from the Appellant; and

- A total of 13 vendor invoices for food purchases made for Louis GN in December 2016 (2 invoices), March 2017 (1 invoice), April 2017 (1 invoice), June 2017 (1 invoice), August 2017 (1 invoice), September 2017 (2 invoices), and October 2017 (5 invoices).

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Louis GN as a small grocery store on December 27, 2013. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 25, 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 800 square feet in size and it does not have a storage area/room outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register located behind a plexiglas barrier and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- The majority of the store shelves are scantily filled with food items;
- The store has two empty coolers;
- Stocks some ethnic/Haitian specialty foods;
- At the time of the store visit Louis GN did not meet the requirements for participation in the SNAP under Criterion A as it stocked only canned milk and shelf-stable butter from the Dairy staple food category and fin fish and shellfish from the Meats, Poultry, Fish staple food category;
- No meat/seafood specials or vegetable bundles that might sell for high prices;
- Not a WIC Program vendor and does not stock any infant foods or infant formula;
- Per the store visit observations, the most expensive food items in stock appear to be frozen whole fish, frozen shellfish, large bags of rice, and oil;
- 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;
- As is indicated in the store visit photo below (Figure 1), there is a limited checkout counter area that is surrounded by a plexiglas barrier. 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 fish, shellfish, and vegetables;
- No fresh unprocessed meats, poultry, or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- Other meat items include canned fish and eggs;

- No kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold;
- A minimal variety and stock of fresh produce;
- Only one variety each of canned fruits and canned vegetables;
- Other staple foods available for purchase include such items as shelf-stable butter, canned milk, bread, pasta, cereal, flour, corn meal, baking mix, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, spices, coffee, tea, and vegetable oil; and
- Ineligible nonfood items include such items as health and beauty items, housewares, household cleaning supplies, paper products, candles, pre-paid phone cards, etc.



Figure 1: Limited checkout counter area surrounded by a plexiglas barrier.

This documentation reflects that the firm is a minimally stocked small grocery store which stocks some ethnic/Haitian specialty foods. It is worth noting that the average SNAP purchase in a small grocery store in Massachusetts during the analysis period was \$13.26, 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.

Charges Based on Computer Program

The Appellant contends that the charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program. At no time did FNS personnel visit Louis GN to conduct an in-store investigation and assess the firm including the types of products being sold and the type of clientele it caters to. Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 263,105 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged. Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail. Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to **store visit observations** and an analysis of household shopping behavior and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that the charges are based solely upon a computer generated analysis is not compelling.

As is indicated above, in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 25, 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. Therefore, the Appellant's contention that FNS personnel did not visit Louis GN to conduct an in-store investigation to assess the store is unfounded.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 16 transaction sets (36 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 Massachusetts 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.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Sometimes SNAP customers conduct their grocery shopping at Louis GN and then they return to make a second purchase because they have forgotten an item they wished to purchase in their initial purchase. However, the Appellant's contentions are not supported by available evidence.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Even if only one transaction was conducted in which SNAP benefits were exchanged for cash and this was the first occasion of SNAP trafficking at Louis GN, the SNAP regulations require that the firm be permanently disqualified from the SNAP.

The Appellant contends that these questionable SNAP transactions are the result of SNAP customers conducting their grocery shopping at Louis GN and then returning to the store to make a second purchase because they forgot an item they wished to purchase in their initial purchase. 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. Louis GN is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, a small variety of frozen unprocessed seafood and no frozen unprocessed meats and poultry, a small variety and amount of frozen vegetables, a minimal variety and amount of fresh produce, only one variety each of both canned fruits and canned vegetables, 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 Louis GN 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 Louis GN 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 Louis GN, where the eligible food stock is limited, often 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 1.1 mile radius of Louis GN that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than Louis GN 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 Louis GN 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 Louis GN'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 Louis GN 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 281 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is very unusual and highly unlikely and a good indication of trafficking in SNAP benefits.

The Appellant contends that with regard to the excessively large purchase transactions, approximately 80 percent of Louis GN's customers are Haitian with over 60 percent of them being EBT recipients. Louis GN is not a standard convenience store that stocks only standard convenience store goods such as canned goods, snacks, produce, milk, eggs, and carbonated drinks. The store also carries Haitian cultural goods including conch meat, king fish steaks, red snapper, and large sacks of wheat and rice as well as organic foods like dried fish, dried mushrooms, and other organic foods. The Haitian foods are expensive. For example, a 10 pound box of conch meat costs \$49.99, a 10 pound case of red snapper costs \$47.99, and a 40 pound bag of jasmine rice costs \$41.99. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The excessively large purchase transactions occurred from the 6th to the 15th of each review month after FNS replenished customers' SNAP benefits resulting in these customers making purchases of expensive food items at Louis GN. However, the Appellant's contentions are not supported by available evidence.

FNS acknowledges that the majority of Louis GN's customers may be Haitian and that a large percentage of them may be SNAP recipients. FNS also acknowledges that in addition to some traditional convenience type foods, Louis GN stocks a few expensive and imported food items such as fish, conch meat, and large bags of rice and that the purchase of these items may account

for a few of the excessively large purchase transactions in Charge Letter Attachment 2. However, it is not likely that purchases of these food items account for the majority of the noted questionable SNAP transactions. The store visit observations of February 25, 2017 indicate that the food stock at Louis GN is minimal. As previously mentioned, Louis GN did not meet the requirements for participation in the SNAP under Criterion A as it stocked only canned milk and shelf-stable butter from the Dairy staple food category and fin fish and shellfish from the Meats, Poultry, Fish staple food category. In addition, the store's stock of "traditional convenience type foods" (as noted by the Appellant) including canned goods, snacks, produce, chips, and carbonated drinks was minimal. The store did not stock any eggs. The store visit photos below (Figures 2 through 5) show that the majority of the store's shelves were scantily filled with food items.



Figure 2: Store shelves scantily filled with food items.



Figure 3: Store shelves scantily filled with food items.



Figure 4: Store shelves scantily filled with food items.



Figure 5: Store shelves scantily filled with food items.

As indicated in the store visit photo below (Figure 6), Louis GN also stocked a minimal variety of fresh produce.



Figure 6: Louis GN has a limited fresh produce stock.

The below store visit photos (Figures 7 and 8) show that Louis GN had two empty coolers.



Figure 7: Empty cooler with no food stock.



Figure 8: Second empty cooler with no food stock.

The store's stock of carbonated drinks was also minimal as is shown in the below store visit photo (Figure 9).



Figure 9: Minimal stock of carbonated drinks.

The Appellant indicated that Louis GN stocks Haitian cultural goods including conch meat, king fish steaks, red snapper, and large sacks of wheat and rice which are expensive. FNS concedes that Louis GN stocks large sacks of rice. However, there is no indication from the store visit observations that the store stocks large sacks of wheat. In addition, the only seafood in stock was a small amount of red snapper and conch meat which was stored in a small chest freezer. The Appellant stated that conch meat is stocked in a 10 pound box which costs \$49.99 and red snapper is stocked in a 10 pound case which costs \$47.99. However, the below store visit photo (Figure 10) indicates that red snapper is sold by the individual fish and conch meat is sold in boxes that weigh less than 10 pounds. In addition, there were no signs or flyers posted inside or outside the store advertising that conch meat is sold by the 10 pound box or red snapper is sold by the 10 pound case.



Figure 10: Red snapper sold by the individual fish and conch meat stocked in boxes that weigh less than 10 pounds.

It is also important to note that many of the expensive food items stocked at Louis GN, such as frozen fish and large bags of rice, are also available at other area authorized SNAP stores. 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 many of the "expensive foods" identified by the Appellant, at lower prices. Therefore, Louis GN has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other area authorized stores. The Appellant also indicated that Louis GN stocks expensive organic foods like dried fish, dried mushrooms, and other organic foods. However, there was no indication from the store visit observations that the subject store stocked any organic foods including dried fish and dried mushrooms.

The Appellant also contends that the excessively large purchase transactions occurred from the 6th to the 15th of each review month after FNS replenished customers' SNAP benefits resulting in

these customers making purchases of expensive food items at Louis GN. While many of the transactions included in Charge Letter Attachment 2 occurred between the 6th and the 15th of the review months, a government report on SNAP household patterns indicates that after the first day of benefit issuance, on average 80 percent of a household's allotment remains unspent. After seven days, 40 percent of benefits remain unspent. Typically two weeks elapse prior to the average household's depletion of 80 percent of its SNAP benefits while three weeks elapse prior to depleting 90 percent. Although many households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in only a few transactions or in a single day. Depleting one's entire allotment in one or two days or in a single day, especially in a minimally stocked small grocery store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

The store visit report and photos show that Louis GN is stocked with a minimal quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, a small variety of frozen unprocessed seafood and no frozen unprocessed meats and poultry, a small variety and amount of frozen vegetables, a minimal variety and amount of fresh produce, only one variety each of both canned fruits and canned vegetables, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has a 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 1.1 mile radius of Louis GN that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than Louis GN 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 Louis GN 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 Louis GN 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 area authorized stores.

In support of his case, the Appellant provided FNS with a signed affidavit. With regard to the Appellant's affidavit which purports to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP retailer to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would

expect that any SNAP retailer affidavit provided would attest to questionable transactions being legitimate.

The Appellant provided FNS with a total of 13 vendor invoices for foods that were purchased for Friends Grocery in the months of December 2016 (2 invoices), March 2017 (1 invoice), April 2017 (1 invoice), June 2017 (1 invoice), August 2017 (1 invoice), September 2017 (2 invoices), and October 2017 (5 invoices). These vendor invoices were provided in an effort to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred at the store during the review period. However, 11 of the invoices were dated outside of the review period and are therefore, not germane to this case. As is shown in the below table, an analysis of the two invoices dated during the review period indicates that the Appellant did not purchase enough foods to cover the SNAP dollar volume for December 2016. Since the Appellant did not provide FNS with information regarding the store's standard sales mark-up percentage, a 40 percent mark-up percentage was used for the invoice analysis as this is customary practice for many authorized retailers.

Invoice Analysis with 40% Mark-up:

5 U.S.C. § 552 (b)(7)(E)

The below tables indicate that when 50 percent and 60 percent mark-ups are applied, the invoice analysis confirm that the Appellant still did not purchase enough foods to cover the SNAP dollar volume for December 2016.

Invoice Analysis with 50% Mark-up:

5 U.S.C. § 552 (b)(7)(E)

Invoice Analysis with 60% Mark-up:

5 U.S.C. § 552 (b)(7)(E)

It is important to note that the above invoice analysis do not take into account Louis GN's cash, debit, and credit sales. Taking such sales into account would further narrow the gap between the store's eligible inventory purchases and its EBT redemptions.

Even if the Appellant had provided FNS with all of Louis GN's vendor invoices for the six month review period and the vendor invoices showed that sufficient food inventory had been purchased 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 minimal variety of stock in the store, no fresh unprocessed meats, poultry, or seafood, a small variety of frozen unprocessed seafood and no frozen unprocessed meats and poultry, a small variety and amount of frozen vegetables, a minimal variety and amount of fresh produce, only one variety each of both canned

fruits and canned 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 little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Louis GN 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 three SNAP households identified in the Charge Letter to analyze their shopping patterns at Louis GN 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 Louis GN often within 5 U.S.C. § 552 (b)(6) & (b)(7)(C) hours of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a small grocery 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 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.

Transaction Amounts Normal

The Appellant contends that the questionable SNAP transactions listed in the Charge Letter Attachments rarely ended in \$x.00 or \$x.50 and are, therefore, consistent with the random transaction amounts of normal food purchases. FNS agrees that it is not plausible that several relatively inexpensive items purchased together would disproportionally result in a total purchase price ending in \$x.00 or \$x.50. Instead, when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more dispersed statistical spread of ending cent ranges from 00 to 99 cents. However, the fact that the majority of the questionable SNAP transactions conducted at Louis GN during the review period did not end in a price variation of \$x.00 or \$x.50 does not by itself substantiate that the transactions were not the result of trafficking in SNAP benefits. Many authorized retailers have trafficked SNAP benefits without conducting violative SNAP transactions that ended in a particular price variation to include \$x.00 and \$x.50.

Reversal of SNAP Disqualification

The Appellant requests that FNS reverse its decision to permanently disqualify Louis GN from the SNAP and allow the store to continue to participate in the program. 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 September 20, 2017 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 6, 2017 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 Louis GN Convenience Store 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

June 7, 2018