

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

Lsemy Llc,

Appellant,

v.

Case Number: C0196981

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 Lsemy Llc 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 Lsemy Llc on September 22, 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 August 18, 2017, the Retailer Operations Division informed the Appellant that Lsemy Llc 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 letters to the Retailer Operations Division dated August 28, 2017 and September 11, 2017, the Appellant, through counsel, denied the trafficking allegations and cited credit extension to SNAP customers as the explanation for the questionable SNAP transactions that were outlined in the August 18, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated September 22, 2017, informing the Appellant that Lsemy Llc 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 October 2, 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 5, 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 July 2016 through December 2016. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value;

- 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 replies to the Charge Letter and in the review request postmarked October 2, 2017 and in a subsequent correspondence postmarked October 30, 2017, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Lsemy Llc.
- The questionable SNAP transactions listed in the Charge Letter Attachments are the result of Lsemy Llc accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments.
- Prior to receiving the Charge Letter from FNS, the Appellant was unaware that credit extension to SNAP customers is a violation of the SNAP regulations.
- To ensure that these types of SNAP violations do not occur in the future, the Appellant has discontinued extending credit to SNAP customers and has implemented strict compliance practices and trained all store employees on the SNAP rules.
- A permanent SNAP disqualification will impose a hardship on SNAP customers as there is no alternative retail store close by and many area residents rely on Lsemy Llc because it is within walking distance of their homes.
- The Appellant requests that a one year SNAP disqualification be imposed in lieu of a permanent SNAP disqualification for the credit extension violations.
- If FNS determines that a one year SNAP disqualification is not warranted, the Appellant requests that the agency impose a civil money penalty (CMP) in lieu of a permanent SNAP disqualification as Lsemy Llc now has strict compliance practices in force and all employees have been duly trained.

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

- Hand-written credit ledgers/chit slips which appear to document the dates of when credit accounts were paid off by SNAP customers. Approximately 48 credit ledgers were provided with "paid off" dates in February 2016, March 2016, April 2016, May 2016, July 2016, August 2016, and January 2017.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Lsemy Llc as a convenience store on August 17, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 14, 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 500 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 and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- Typical convenience store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- No meat/seafood specials or bundles that might sell for high prices;
- Not a WIC Program vendor and does not stock any infant formula or infant foods;
- No expensive food items in stock;
- 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;
- Very limited checkout counter area surrounded by a plexiglas barrier with a turn-style. 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 only;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meat, poultry, or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- Meat items include packaged lunch meat, canned/potted meat, canned fish, hot dogs, meat jerky, and eggs;
- No 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 minimal variety of canned fruits;
- A minimal variety of canned vegetables;
- No fresh produce;
- Other staple foods available for purchase include such items as 100% juice, soup, milk, butter, pasta, loaf bread, cereal, flour, corn meal, cakes/pastries, 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 sugar; and
- A good supply of ineligible nonfood items such as tobacco products, health and beauty items, paper products, household cleaning supplies, laundry detergent, pet food, lottery tickets, clothing, charcoal, etc.

This documentation reflects that the firm is a typically stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Washington, D.C. during the analysis period was \$7.58, 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 he denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Credit Transactions

The Appellant contends that the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Lsemy Llc accepting SNAP benefits as repayments on credit

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

The Appellant provided the Retailer Operations Division with the following documents as evidence that credit was extended to SNAP customers during the six month review period:

- Six hand-written credit ledgers/chit slips which appear to document the dates of when credit accounts were paid off by SNAP customers. These credit ledgers did not include any dates for when credit was extended or paid off by the customers. The credit ledgers include only the first name of the SNAP customers to which credit had been extended.

The Appellant provided the Administrative Review Officer with the following documents as evidence that credit was extended to SNAP customers during the six month review period:

- Forty-two (42) hand-written credit ledgers/chit slips which appear to document the dates of when credit accounts were paid off by SNAP customers. These credit ledgers included “paid off” dates in February 2016, March 2016, April 2016, May 2016, July 2016, August 2016, and January 2017. The credit ledgers include the first and last names of the SNAP customers to which credit had been extended but did not include any other SNAP recipient identifiable information such as the customers’ EBT card numbers or resident addresses.

FNS reviewed the information/documentation provided from the Appellant and properly determined that the information was insufficient to support the Appellant’s credit extension contention for the following reasons:

- Six of the credit ledgers provided by the Appellant included the first name only of the SNAP customers to whom credit had been extended. The remaining 42 credit ledgers provided the first and last names of each customer (Note: Many of the customer names were illegible and not discernable). However, no other SNAP recipient identifiable information was provided such as the customers’ EBT card numbers or resident addresses. Therefore, there is no way for FNS to validate if the persons who supposedly purchased food items on credit were indeed SNAP customers;
- The credit ledgers provided to FNS document the individual amounts of the purchases made on credit, the total amount of credit extended and owed by each customer per month, and the dates of when the credit accounts were paid off. The individual food items purchased and the dates that the food items were purchased on credit were not provided on the credit ledgers (Note: The six credit ledgers provided to the Retailer Operations Division did not document the dates to which the credit accounts were paid off. However, the six transaction amounts documented in these credit ledgers do not match any of the SNAP transactions listed in the Charge Letter Attachments). There

were 42 credit ledgers with “paid off” dates in February 2016, March 2016, April 2016, May 2016, July 2016, August 2016, and January 2017. The credit ledgers with paid off dates in February 2016, March 2016, April 2016, May 2016, and January 2017 are outside of the review period and are, therefore, not germane to this case.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

- There was no documentation provided listing the individual foods that were purchased on credit by each customer;
- No documentation was provided that validates whether the alleged credit was paid off by cash, credit/debit card, personal check, or SNAP benefits;
- No documentation was provided that validates the dates to which the food items were purchased on credit;
- No documentation was provided that validates that the credit extended to each SNAP customer was done so during the six month review period. The dates included on the credit ledgers were hand-written;
- No documentation was provided that validates the amount of credit that was extended to each customer during the six month review period. The transaction amounts included on the credit ledgers were hand-written.

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

Same Cents Transactions

Charge Letter Attachment 1 lists 224 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Consequently, when there are a disproportional amount of transactions that end in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking.

The Appellant contends that the unusual number of transactions that ended in a same cents value are the result of Lsemy Llc accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant’s claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

A review of the notes and photographs from the FNS store visit of January 14, 2017 shows that the majority of food items in the store have prices that do not end in any particular price variation or value. The store visit observations indicate that Lsemy Llc’s food inventory consists of almost exclusively inexpensive, typical convenience store type foods. As such, it is implausible that several of these relatively inexpensive food items purchased together would routinely total to purchase amounts ending in \$x.99.

Due to Lsemy Llc's mostly low cost foods, the larger dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in a total purchase price ending in \$x.99. 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. Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transaction purchases ending in \$x.99 cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Repeat Transactions by the Same Household

Charge Letter Attachment 2 lists 38 transaction sets (84 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 convenience stores in Washington, D.C. during the review period. Even the smallest transaction listed in Charge Letter Attachment 2 is more than 2.5 times larger than the average transaction made at an average convenience store in Washington, D.C. 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 the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Lsemy Llc accepting SNAP benefits as repayments on credit accounts from SNAP customers upon receipt of their monthly EBT benefit allotments. With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

In addition, the retailer's contention that these questionable SNAP transactions are the result of credit extension cannot be explained by the transactions found in Charge Letter Attachment 2. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. If the transactions were the result of credit extension then it would be normal to see one large transaction for a credit account payment and possibly an additional smaller transaction for a purchase made by the customer. However, that is not the case.

5 U.S.C. § 552 (b)(7)(E)

Other transaction sets follow a similar pattern and cannot be explained by credit. Some transactions like 244–247, 268–269, and 292–293 are for the same dollar amount and cannot be explained by credit.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

There were also occasions when a large dollar transaction was conducted followed hours later by another large transaction. It is unreasonable that a customer would come to the store just to repay their credit charges, and then return hours later to make purchases, or vice versa.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(7)(E)

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. Lsemy Llc 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, no fresh produce, a minimal variety of 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 convenience stores to have purchases such as those cited, especially when Lsemy Llc does not stock any high priced food items so all of the 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 Lsemy Llc 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 Lsemy Llc, where the eligible food stock is limited, often on the same day, or within 24 hours 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 44 SNAP authorized retailers located within a 1.0 mile radius of Lsemy Llc that can meet the nutritional needs of SNAP customers. These authorized stores include 23 convenience stores, 8 combination grocery stores, 7 small grocery stores, 3 supermarkets, and 3 super stores. Several of these authorized SNAP stores are larger than Lsemy Llc 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 Lsemy Llc 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 Lsemy Llc'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 Lsemy Llc or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions

Charge Letter Attachment 3 lists 321 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **T5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that Lsemy Llc would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

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

The store visit report and photos show that Lsemy Llc was stocked with a limited quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, a minimal variety of canned fruits and canned vegetables, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show no expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanners, 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 44 SNAP authorized retailers located within a 1.0 mile radius of Lsemy Llc that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than Lsemy Llc 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 Lsemy Llc 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 Lsemy Llc 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.

As seen in the below bar graph, the difference in average SNAP transaction dollar amount at Lsemy Llc during the review period when compared to the average convenience store in the Washington D.C. area during the same timeframe is much greater. This is very unusual and irregular and a strong indicator that trafficking is the most plausible explanation for this large difference in SNAP transaction dollar amounts.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

A comparison of the SNAP transactions conducted at Lsemy Llc with the average for convenience stores in Washington, D.C. was conducted by FNS for the review period. This comparison shows that shopping patterns at Lsemy Llc are not typical and exhibit an excessive number of high dollar transactions for a store of this type. As illustrated below, Lsemy Llc's transactions exceed that of area convenience stores in all ranges. The appearance and quality and quantity of food stock does not merit SNAP recipients conducting so many high dollar transactions at Lsemy Llc. In fact, the store visit observations prove that this store does not sell any unique items that cannot be purchased at other stores in the area.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The Appellant did not submit any vendor invoices to FNS for foods purchased for Lsemy Llc 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, a vendor invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor invoices to FNS that were during the review period and the invoices indicated that Lsemy Llc 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 unusual numbers of transactions ending in a same cents value and 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 limited variety of stock in the store, no fresh or frozen meats, poultry, or seafood, no fresh produce, no frozen fruits or vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and very little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Lsemy Llc to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Lsemy Llc 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 Lsemy Llc 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 convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding 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 3 are more likely than not the result of trafficking in SNAP benefits.

Unaware Credit Extension a SNAP Violation

The Appellant contends that prior to receiving the Charge Letter from FNS he was unaware that credit extension to SNAP customers is a violation of the SNAP regulations. The Appellant, upon being authorized by FNS to participate in the SNAP on August 17, 2015, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

Corrective Actions Implemented

The Appellant contends that in order to ensure that these types of SNAP violations do not occur in the future, he has discontinued extending credit to SNAP customers and has implemented strict compliance practices and trained all store employees on the SNAP rules. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. 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 after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that he has taken corrective actions, though they would have been

valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Imposed Hardship on SNAP Customers

The Appellant contends that a permanent SNAP disqualification will impose a hardship on SNAP customers as there is no alternative retail store close by and many area residents rely on Lsemy Llc because it is within walking distance of their homes. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause “hardship” to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: “A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification”. Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Alternate Penalty

The Appellant requests that a one year SNAP disqualification be imposed in lieu of a permanent SNAP disqualification for the credit extension violations. 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

The Appellant contends that if FNS determines that a one year SNAP disqualification is not warranted, he requests that the agency impose a civil money penalty (CMP) in lieu of a permanent SNAP disqualification as Lsemy Llc now has strict compliance practices in force and all employees have been duly trained. In the August 18, 2017 Charge Letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant’s receipt of their Charge Letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violations(s) occurred prior to the occurrence of violations cited in the Charge Letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, he will lose his right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "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, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the Appellant's responses to the Charge Letter allegations dated August 28, 2017 and September 11, 2017, he requested that FNS allow him to pay a civil money penalty in lieu of permanently disqualifying Lsemy Llc from participation in the SNAP as the store now has strict compliance practices in force and all employees have been duly trained. However, the Appellant did not provide any information or documentation to validate that he had developed an effective compliance policy and program as specified in 7 CFR § 278.6(i)(1) and that both were in operation at Lsemy Llc prior to the occurrence of the SNAP violations that were cited in the Charge Letter. As such, the Appellant did not address the requirements described herein and did not provide any evidence, in accordance with the criteria detailed in the referenced regulations, that the firm established and implemented an effective policy and program to prevent violations.

Therefore, in the September 22, 2017 Determination Letter, the Appellant was informed by the Retailer Operations Division that consideration was given to the Appellant for a trafficking CMP according to the terms of the SNAP regulations but the Retailer Operations Division determined that the Appellant was not eligible for the trafficking CMP because he failed to submit sufficient evidence to demonstrate that Lsemy Llc had established and implemented an effective compliance policy and program prior to the SNAP violations occurring in order to prevent violations of the SNAP. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

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 Lsemy Llc 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 11, 2018