

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

Lyons Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0224789

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of Lyons Market (“Appellant”) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Lyons Market.

AUTHORITY

7 U.S.C. § 2023 and 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

Lyons Market was initially authorized to participate in SNAP on September 29, 1997. In a letter dated February 10, 2020, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of May 2019 and October 2019, and information obtained during a visit to the store by an FNS contractor on August 10, 2019. The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). The letter also stated that Appellant may request a civil money penalty (CMP) in

lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the trafficking charges on February 28, 2020, April 10, 2020, and May 20, 2020, denying the charges and asserting the following contentions, in summary:

- The time period of the investigation was one of the busiest times of the year for the store due to the recreational activities nearby, such as lakes, campgrounds and trails.
- The store is more like a small-town grocery store, rather than a convenience store, as it has 32 refrigerator or frozen doors, with 24 of them filled with SNAP eligible food and beverages.
- The closest grocery store is roughly 12 miles away, and a number of customers do not have the ability or means to travel to the next town.
- The store is a business trying to succeed, and it is bad customer service and impossible for a cashier to know how many times a customer or their multiple family members have come through the store on a given shift or day.
- Refusing a customer whose card will not swipe, when the machine is capable of manual entry, is bad business and loss of revenue. Every dollar counts for a small business.
- Larger sales are due to credit accounts. Although Appellant was aware that these were unacceptable, when a parent came in that has multiple children and asking to charge food, it was hard to say no. Since receiving the charge letter, the firm has stopped all charge accounts.
- Appellant apologizes for breaking the USDA rules regarding charge accounts, but not for helping people in need.

In addition to these contentions, Appellant submitted sales summaries for each of the months May 2019 through October 2019, and around 25 electronic customer purchase receipts for the same time period. Appellant did not request a trafficking CMP.

Given Appellant's claim of allowing SNAP households to purchase food on store credit, The Retailer Operations Division informed Appellant, by letter dated August 2, 2018, that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of program regulations, at 7 CFR § 278.2(f). The letter requested documentation to support that food items were purchased on credit and stated this documentation must identify specific accounts along with corresponding dates and amounts. Appellant did not respond to this letter.

After considering Appellant's reply and further analyzing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated July 14, 2020. This letter informed Appellant that the firm would be permanently disqualified from SNAP upon receipt of the letter, in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that Appellant was not eligible for a trafficking CMP in accordance with paragraph § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked July 27, 2020, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This 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 & REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of [SNAP benefits] or trafficking in [SNAP benefits] 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 § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption....

Trafficking means:

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

7 CFR § 278.2(a) states, in part:

[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

7 CFR § 278.2(f) states, in part:

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

7 CFR § 278.6(a) states, in part:

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system....** Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and **disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.** [Emphasis added.]

7 CFR § 278.6(b)(2)(ii) states, in part:

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... 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).

7 CFR § 278.6(b)(2)(iii) states:

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 a penalty.

7 CFR § 278.6(e)(1)(i) states, in part:

[FNS] shall...disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...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 of the Program.

SUMMARY OF CHARGES

Lyons Market was charged with trafficking and subsequently permanently disqualified from participating in SNAP based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for May 2019 through October 2019. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** Multiple transactions were made from the accounts of individual SNAP households within a set time period; and
- **Charge Letter Attachment 2:** A large number of EBT manual transactions were made from the accounts of SNAP households.
- **Charge Letter Attachment 3:** SNAP transactions were large based on observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

Appellant, through counsel, made the following summarized contentions as part of its request for administrative review, and in supplemental correspondence emailed on October 2, 2020, in relevant part:

- The store did not engage in trafficking, but rather, the pertinent records indicate the store engaged in extending credit to its SNAP customers.
- Extending credit to SNAP customers is widespread among small shops all over poor communities; in this case, the store was simply attempting to provide goods to lower-income individuals and their families who were in desperate need of products at the time they were extended credit.
- People from all over the surrounding community shop for groceries at the store.
- A permanent disqualification will put the store out of business, leaving a void for grocery items in the neighborhood.
- Recent multi-state fires have caused extensive damage to infrastructure, and the community served by the store needs as many food options as possible due to the fires and the COVID pandemic.
- Store employees allowed SNAP recipients to purchase items on credit and maintained a record of those transactions. At the beginning of each month, those beneficiaries who received extensions of credit would redeem SNAP benefits to pay down their debt.
- Evidence submitted will explain why there were a high number of above average transactions in a relatively short time period and will show the store has fully accounted for each and every transaction that gave rise to the trafficking allegation.
- The store is submitting not only credit ledgers to show this is not trafficking, but also signed statements from each household identified by the Agency, attesting that the

store extended credit to them. In each signed statement, each individual household attests to the fact the store provided them credit and explains that they would pay down their balance when their SNAP benefits were reloaded.

- Large transactions have nothing to do with trafficking, but are due to the fact that the store acts as a supermarket for a number of its SNAP customers, including large families.
- The store has an extensive canned-goods section, as well as a large selection of frozen foods, including frozen vegetables, meats, and meals that are all SNAP eligible. The store has a number of pre-packaged foods in addition the canned goods, such as breads, sandwich making materials, grains, snack foods, rice, oils, breakfast foods and other assorted goods.
- SNAP households shop at the store for an entire household's worth of food and treat the store as their general supermarket. Accordingly, it is not irregular for families to spend hundred of dollars, as many larger households do, on food at the store.
- The store concedes it has violated the prohibition on the extension of credit to SNAP customers, for which the appropriate punishment is a one-year suspension and not permanent disqualification.

In support of these contentions, the Appellant submitted 102 undated photographs of store inventory, six client statements attesting to the store extending credit for food purchases, 39 electronic customer purchase receipts, and 25 handwritten pages which purportedly document credit transactions.

The preceding may represent only a brief summary of the Appellant's contentions and evidence submitted. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the trafficking determination. Once a trafficking determination is made based upon EBT data and information obtained during a store visit, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Store Visit Report

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a store visit conducted by an FNS contractor on August 10, 2019, to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction

patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- The firm is a convenience store, approximately 1,750 square feet in size, with 150 square feet of storage outside of public view and multiple storage coolers or freezers.
- At the time of the store visit, the firm had no shopping baskets for customers to use, but did have 2 shopping carts.
- The store visit photographs show one cash register for food purchases and agency records show the use of one EBT point-of-sale device.
- The firm uses optical scanners to process transactions, though there is no conveyer belt at the checkout area.
- The checkout area consists of a small and cluttered counter space where items can be placed for purchase.
- The store's staple food stock meets SNAP program eligibility requirements. The store does not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- The firm had no fresh unprocessed meat or seafood, a limited selection of frozen unprocessed meats, limited fresh fruit and vegetables, no baby cereals or foods, no baby juices, and no infant formula.
- SNAP-eligible, non-staple, accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including tobacco products, alcohol, health and beauty aids, paper goods, pet foods, and housewares.
- The firm had a few small kitchen/food prep areas containing a coffee machine, microwave oven, deep fryer, stainless steel preparation table, heated foods display case, and storage freezers.
- There is no indication from the store visit report that the firm has a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc. A few items ended in a 6 or 3, such as \$1.16 or \$4.53.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- Store personnel confirmed that no food was stored offsite.
- The store did not sell any specialty or international foods that would normally sell for a high price.
- The store does not take telephone or online orders, nor does it offer delivery; and
- The most expensive food items for sale at the store included a 10-ounce package of Tillamook jerky for \$15.99; a 16-ounce package of Folgers coffee for \$14.99; a 42-ounce package of beef patties for \$13.99; and a 32-ounce package of Maltomeal Colossal Crunch cereal for \$6.99.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Credit Accounts

Appellant does not dispute that the questionable SNAP transactions documented in the charge letter attachments occurred at Lyons Market, but rather claims these transactions are due to the store accepting SNAP benefits as repayment on credit accounts from SNAP customers. Appellant contends store employees allowed SNAP recipients in desperate need to purchase items on credit. Then, at the beginning of each month, the customers would redeem SNAP benefits to pay down their debt. Appellant claims to have maintained a record of these transactions and submitted documentation to this effect.

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. These transactions must also correspond with the transactions in the charge letter attachments.

In this case, Appellant submitted 23 electronic customer purchase receipts to the Retailer Operations Division that were dated during the investigation period of May 2019 through October 2019. On administrative review, Appellant submitted 39 electronic customer purchase receipts dated during the investigation period, 25 handwritten pages purportedly documenting credit transactions, and six client statements attesting to the store extending credit for food purchases. However, the documentation submitted by Appellant was inconsistent and problematic as evidence, for the reasons described below:

Electronic Customer Purchase Receipts and Handwritten Accounting of Credit Accounts

In total, the charge letter attachments contained 153 unique transactions in total. However, Appellant submitted only 63 electronic purchase receipts, including 25 sent to the Retailer Operations Division and 38 submitted for this administrative review. One of the receipts was submitted to both the Retailer Operations Division and on administrative review, while another receipt was submitted twice on administrative review. Given the duplications, only 61 unique receipts were submitted on administrative review. Among these, three of these electronic purchase receipts did not match transactions on the charge letter attachments. Although Appellant claims to have fully accounted for each transaction that gave rise to the trafficking allegation, the documentation submitted falls substantially short of doing so given Appellant has accounted for only 58 of the 153 transactions in the charge letter attachments.

The electronic purchase receipts are inadequate not only in quantity, but also in substance. The electronic purchase receipts document the sale of items purchased with SNAP benefits; Appellant claims that in some instances, they also document the repayment of items previously purchased on credit.

The 25 receipts submitted to the Retailer Operations Division match transactions on the charge letter attachments. However, only two of these receipts are marked as containing repayments for credit accounts. Each of these two receipts shows an item purchased as “no price1” charged to “EBT/SNAP.” These “no price1” items are marked in handwriting as payments for items previously purchased on credit. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). To note, cigarettes are ineligible for purchase with SNAP benefits, and the sale reflected in this receipt is a violation of SNAP regulations, though it is a lesser violation than the trafficking charge in this case. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

There is one additional notable receipt in the batch of receipts submitted to the Retailer Operations Division. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

As noted above, on administrative review, Appellant submitted an additional 38 electronic customer purchase receipts. These were grouped in sets along with 25 handwritten pages purported to account for the items purchased on credit. Although Appellant did not explain the documentation submitted, the 38 electronic customer purchase receipts appear to reflect SNAP benefit redemptions which include repayment for credit accounts, and the handwritten pages document the items previously purchased on credit.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The second handwritten accounting contained no dates. Given that Appellant submitted conflicting handwritten documentation to explain one electronic customer purchase receipt, it is highly likely that Appellant fabricated one or more of the handwritten pages accounting for items purchased on credit. It certainly calls into question the legitimacy of this documentation.

Further, in almost every instance, SNAP customers had an adequate remaining SNAP balance to cover the full amount of any remaining credit balance documented on Appellant’s handwritten documentation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This amount was more than enough to pay the remaining credit balance on the account.

Further, many of the handwritten accountings of credit accounts are missing important information, such as dates of purchases, or dates of repayments. More importantly, for those that do identify a customer by first name, when looking at the electronic purchase receipts that match, the household number on these sometimes also match the electronic purchase receipts identified to be for other individuals. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Accordingly, the handwritten documentation submitted by Appellant is extremely questionable and appears to have been created subsequent to the electronic purchase receipts, to validate the charges on them. It would be more likely that the firm would ring up items purchased on credit electronically through the cash register, and save those electronic receipts as documentation of credit owed, rather than handwrite each individual item sold on credit and calculate total costs on a calculator, as was done here.

With regard to the electronic purchase receipts submitted on administrative review, while the two receipts submitted to the Retailer Operations Division that identified credit transactions

contained one itemized “no price1” charge that was purportedly for repayment of credit, the remaining electronic purchase receipts simply show SNAP benefits redeemed for large dollar amounts exceeding the itemized receipt total, and change provided in “CASH” for the balance, in even dollar increments. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is very unlikely the store would use such varied methods for issuing and accepting repayment of credit given the inconsistency it would create in the store’s accounting. It is more likely the firm was giving customers cash in exchange for their SNAP benefits, just as the receipts explicitly show.

Additionally, the majority of the electronic receipts submitted show ineligible items being sold in exchange for SNAP benefits, including four that contained only ineligible items sold. Most often these ineligible items are Camel or Marlboro cigarettes, but also tampons, antifreeze, or toothbrushes. The electronic purchase receipts appear to be rife with SNAP violations, and on their face, document trafficking in the form of change from SNAP benefit transaction being returned to customers in the form of cash. Given the apparent violations on the electronic purchase receipts and that the handwritten documentation fails to legitimately explain the SNAP benefit redemptions reflected on the electronic purchase receipts, Appellant’s evidence falls far short of proving the firm extended credit to SNAP customers.

Client Statements

On administrative review, Appellant submitted pre-printed form statements signed by six customers attesting that the store extended credit to them. On these form statements, the six customers filled in only the date and their name, and then signed the statement; there were no unique explanations for the credit needed among the six customers. The client statements in this case are largely unconvincing. Customers engaging in trafficking violations are unlikely to admit to such conduct, potentially opening themselves up to administrative and/or criminal charges. On the contrary, experience has shown that SNAP customer statements and affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence otherwise.

Appellant’s limited evidence of credit accounts fails to account for the majority of the transactions in the charge letter, and, more importantly, the submitted evidence fails to prove that these transactions are actually credit transactions rather than trafficking. For these reasons, this review finds there is insufficient evidence to support Appellant’s claim that irregular transaction patterns cited in the charge letter were due to repayments of credit accounts with SNAP benefits. In light of this, the remainder of this analysis will focus on Appellant’s remaining contentions regarding the charge letter attachments.

SNAP Transaction Analysis

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 20 sets of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

Appellant contends the store is more like a small-town grocery store rather than a convenience store, and that given the closest grocery store is roughly 12 miles away, a number of customers

do not have the ability or means to travel there. Further, Appellant claims that it is bad customer service and impossible for a cashier to know how many times a customer or their multiple family members has come through the store on a given shift or day.

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant provided no documentation showing the items purchased by these two households were legitimate purchases of food in exchange for SNAP benefits.

Further, in making its determination, the Retailer Operations Division identified another convenience store located about a quarter-mile away from Appellant, with very similar stock, for comparison. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that the two stores are similarly stocked and located so near to one another, it is unlikely that shopping patterns would differ so significantly between the two stores.

The Retailer Operations Division also identified 11 other stores within a 10-mile radius of Lyons Market, including a super market 9.27 miles away and a store currently categorized as a large grocery store that is 6.8 miles away. Appellant's customers shopped at these stores, and at others located much farther away. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's claims that larger grocery stores are inaccessible to customers due to transportation issues falls short in light of transaction data showing that customers were regularly redeeming SNAP benefits at supermarkets and super stores ten to twenty, or more, miles away.

Appellant's contentions and evidence fail to establish that the transactions in Charge Letter Attachment 1 are legitimate purchases of food. Rather, they are highly irregular, and their legitimacy is refuted by the evidence in this case. As such, this review concludes that trafficking was a likely cause of the transaction patterns listed in Charge Letter Attachment 1.

Charge Letter Attachment 2: A large number of EBT manual transactions were made from the accounts of SNAP households. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

Appellant's only contention regarding manual transactions is that refusing a customer whose card will not swipe, when the machine is capable of manual entry, is bad business and loss of revenue as every dollar counts for a small business. Appellant claims that cashiers always mention to customers that they should get a new card that swipes.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Clearly, this household's card was working given that Appellant was able to process a swipe transaction both before and after several manual transactions. In fact, the Retailer Operations Division identified that at least four of the eight households on this attachment conducted swipe transactions at another store on the exact same day they conducted manual transactions using the same card number at Appellant. This evidence shows that many of these households were in possession of EBT cards that worked, contrary to Appellant's contention that the cards would not swipe.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is highly suspect that card failure was significantly more likely to occur during high-dollar transactions, as opposed to low-dollar transactions, particularly when high-dollar transactions generally occur more infrequently than low-dollar transactions. Appellant has provided no explanation that clarifies this disparity.

Appellant's contention and evidence fail to prove that the transactions in Charge Letter Attachment 2 were legitimate. Given the weight of the evidence, this review concludes that the manual transactions were likely the result of trafficking.

Charge Letter Attachment 3: SNAP transactions were large based on observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with sales typical of a convenience store in the state of Oregon. For perspective, the Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Oregon was \$7.23. In Linn County, the average was even lower, at \$6.83 per transaction.

Appellant contends that the large transactions have nothing to do with trafficking, but are due to the fact that the store acts as a supermarket for a number of its SNAP customers, including large families. Appellant says the store has an extensive canned goods section, a large section of frozen foods, and a number of pre-packaged foods and that SNAP households shop at the store for an entire household's worth of food. In support of its contentions, Appellant submitted 102 undated photos of the store's inventory. Appellant had also previously sent Monthly Sales Summaries to the Retailer Operations Division for the months of May through October 2019.

Appellant's contentions are not borne out by the evidence in the case. First, the Monthly Sales Summaries Appellant sent to the Retailer Operations Division show limited data, to include only the business days of the month, transaction quantity, returned amounts, item sales quantities, and net sales amount. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's own evidence shows just how irregularly large the transactions in Charge Letter Attachment 3 are relative to the average transactions in its own business.

Further, in look at the electronic purchase receipts submitted by Appellant on administrative review, these likewise bear out relatively small transaction amounts for purchases at the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While this is higher than the average transaction amount calculated from the Monthly Sales Summaries, this logically follows given that the electronic receipts only reflect the store's largest transactions, as listed in Attachment 3. It's also likely these transactions are inflated in terms of SNAP-eligible food sales. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These high-priced unidentifiable charges inflate the average transaction amount for itemized purchases on the electronic purchase receipts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's contentions and evidence fail to explain these large transactions, and rather make them appear even more irregular and akin to trafficking.

Hardship to Appellant and Community

Appellant contends that a permanent disqualification will put the store out of business. Appellant also contends that closure would leave a void for grocery items in the neighborhood, particularly in light of recent multi-state fires and the COVID pandemic.

With regard to the contention that the store may have to close, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP; however, there is no provision in the statute or regulations for a waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty. Likewise, there is no permitted waiver or reduction of an administrative penalty for trafficking due to hardship to the community served by the store.

Summary

It is the finding of this review that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.

Upon review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. In fact, the Appellant offered little reliable evidence to support its contentions regarding specific transactions listed in the charge letter. This is wholly insufficient to warrant reversal of the agency's permanent disqualification determination. In the absence of reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant.

CIVIL MONEY PENALTY

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty (CMP) in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must request a CMP in lieu of permanent disqualification and submit sufficient evidence within designated timeframes. The case record shows that the Appellant did not request a trafficking CMP when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Based on the discussion above and the evidence under review, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i) as the Appellant failed to meet the regulatory requirements for a trafficking CMP.

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Lyons Market was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further supported the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against Lyons Market, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. 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 Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

December 1, 2020