

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

M Food Mart,

Appellant,

v.

Case Number: C0230141

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 M Food Mart (hereinafter “M Food Mart” or “Appellant”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against M Food Mart

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 July 9, 2020, the Retailer Operations Division informed the Appellant that M Food Mart was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

In a response to the Retailer Operations Division of July 20, 2020, the Appellant replied to the charges therein denying the trafficking allegations and citing credit extension as explanation for the questionable SNAP transactions cited in the charge letter. Based on the Appellant's credit extension response, in a letter dated July 21, 2020, the Retailer Operations Division informed the Appellant that the acceptance of SNAP benefits as payment for items sold to a household on credit is a violation of SNAP regulation 278.2(f) and that a firm that commits such violations shall be disqualified from participation in the SNAP for a period of one year. The Retailer Operations Division requested that the Appellant provide documentation to support that food items were purchased on credit as noted in the response provided on July 20, 2020. This documentation must identify specific accounts along with corresponding dates and amounts. The Appellant was informed that it had 10 days, from receipt of the letter, to provide the requested documentation and any information, explanation, or evidence regarding the charges outlined in the July 9, 2020 charge letter.

The record indicates that in responses of July 29, 2020, August 10, 2020 and August 20, 2020, the Appellant replied to the charges therein denying the trafficking allegations and citing credit extension and other explanations for the questionable SNAP transactions cited in the charge letter. In support thereof, the Appellant submitted numerous pages from credit ledgers (notebook), a cash register receipt dated March 5, 2020 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and two cash register receipts and matching EBT receipts for purchases that occurred on June 22, 2020 and June 23, 2020.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 10, 2020, informing the Appellant that M Food Mart was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked September 17, 2020, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated October 1, 2020.

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 December 2019 through March 2020. This involved the following SNAP transactions patterns which are indicative of trafficking:

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

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the replies to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- Most of the Appellant's customers and the owner have a good a long-term relationship as the owner has operated the store for nearly 12 years. The majority of customers live within a 2.5 mile radius. Customers shop at the store multiple times a day as they come

for a drink and breakfast in the morning then get lunch for their children in the afternoon. The Appellant tries to offer customers convenience and the ability to get staple foods, drinks, and snacks so they do not have to go to the grocery store all of the time.

- Because of the COVID-19 pandemic, the store next to the Appellant closed down causing more customers to shop at the subject firm. Many restaurants are also closed, so the Appellant can offer a quick meal in their place. This accounts for the surge in use of EBT.
- With the rising cost of food, many of the Appellant's customers were stressed and needed help with items between the time they spent their SNAP benefits and the time when they received more. The owner wanted to help them by issuing them credit for food items only, to be repaid when they received their SNAP benefits. This accounts for the large transaction amounts. The owner has since learned that that he should not have extended credit to SNAP customers. The owner did not realize that by helping SNAP customers, he could hurt the business. The owner apologizes for the inconvenience caused by this action.
- The Appellant requests reconsideration of the SNAP disqualification as SNAP is a form of help that many of the store's neighbors and customers receive. The Appellant wishes to continue to help the community by continuing to offer this service. The Appellant was only trying to help people meet their day-to-day needs by accepting payment on food they received on prior occasions.

In support of these contentions, the Appellant submitted the following information for review:

- Numerous pages from credit ledgers (notebook);
- Cash register receipt dated March 5, 2020 5 U.S.C. § 552 (b)(6) & (b)(7)(C); and
- Two cash register receipts and matching EBT receipts for purchases that occurred on June 22, 2020 and June 23, 2020.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized M Food Mart as a convenience store on September 29, 2010. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 21, 2019 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,925 square feet in size with no additional storage 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;
- One checkout counter area with limited check-out counter space;

- Had optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not have a special pricing structure, such as prices ending in \$.x9 or \$.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone orders were not taken;
- Delivery was not offered;
- Had an ATM for customer use;
- The four most expensive eligible food items in stock were Jack Links at \$20.99 per 18 ounces (6 units in stock); nacho cheese taco shells at \$10.00 per 4 pounds (2 units in stock); Red Bull energy drink at \$7.59 per 4 pack; and canned whole tomatoes at \$6.99 per 10 ounces (1 unit in stock);
- Had empty/scantily filled shelves;
- No fresh or frozen meats, poultry, or seafood;
- Frozen foods included ice cream only;
- No kitchen and hot foods were not sold;
- No deli counter and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned fish, canned/potted meat, meat jerky, and pickled sausage;
- Dairy included milk only;
- Fresh produce stock consisted of a few bananas;
- Other staple foods available for purchase included such items as juice, pasta, cereal, flour, buns/rolls, loaf bread, oats, rice, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, ice cream, and condiments; and
- Ineligible nonfood items included gasoline, tobacco products, health and beauty aids, paper products, household cleaning supplies, pet food, alcohol, automotive supplies, newspapers, and incense.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

The Retailer Operations Division presented a case that the Appellant trafficked SNAP benefits. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant during the review period. A singular transaction could appear in more than one Attachment as it can meet the criteria for several different types of flags. As patterns of unusual transactions appear across multiple Attachments the case of trafficking becomes more convincing.

Credit Transactions

The Appellant contends that the owner wanted to help customers by issuing them credit for food items only, to be repaid when they received their SNAP benefits. This accounts for the large transaction amounts. The owner has since learned that that he should not have extended credit to SNAP customers. The owner did not realize that by helping SNAP customers, he could hurt the business. The owner apologizes for the inconvenience caused by this action.

In response to the Appellant's claim of credit extension to SNAP customers, via letter dated July 21, 2020, the Retailer Operations Division requested documentation to support that food items were purchased on credit and stated that this documentation must identify specific accounts along with corresponding dates and amounts. The Appellant responded to the July 21, 2020 credit letter by submitting numerous pages from credit ledgers (notebook pages), a cash register receipt dated March 5, 2020 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and two cash register receipts and matching EBT receipts for purchases that occurred on June 22, 2020 and June 23, 2020.

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. Such proof should also correspond with the transactions identified in the letter of charges. Unfortunately, the documentation provided by the subject firm falls short of these requirements.

A review of the credit ledgers and the cash register and corresponding EBT receipts dated June 22, 2020 and June 23, 2020 indicate credit established outside of the review period of December 2019 through March 2020. As such, the credit included on the ledgers and subject receipts is not relevant to the present case. With regard to the March 5, 2020 cash register receipt provided by the Appellant, the Retailer Operations Division conducted a search in ALERT for SNAP transactions occurring at the Appellant firm from March 2020 to June 2020. The review did not reveal a transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Also, the retailer did not submit

documentation to prove a credit account was established for this purchase, meaning there was not a log submitted that matches a purchase for that amount.

It is also important to note that the owner's contention of credit accounts lacks credibility due to his contradictory responses to the Retailer Operations Division. According to the owner's August 20, 2020 email to the Retailer Operations Division the "pay in" amounts on the ledgers are credit repayments for nonfood items; however, the owner's July 20, 2020 response states he only allowed credit for food. Further, several ledgers document fuel charges, an ineligible SNAP purchase.

The burden is on the retailer to provide a preponderance of evidences to prove credit accounts and to refute trafficking charges. Such evidences would included invoices to prove the purchase of adequate inventory for credit accounts and large transactions, and up-to-date credit ledgers with repayment amounts to correspond with transactions in the charge letter. The outdated ledgers indicate credit was part of the business practice in the past, but do not prove the practice resulted in high dollar transactions during the review period. Without sufficient evidence, the transactions are more likely than not the result of trafficking.

With regard to the Appellant's contention that it was unaware that the extension of credit to SNAP customers was a violation of the SNAP regulations, the owner, upon being authorized by FNS to participate in the SNAP on September 29, 2010, 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.

In conclusion, although the Appellant may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the charge letter are due to repayment on credit accounts.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This charge letter Attachment documents 13 sets of transactions (44 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were conducted by five (5) different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

The Appellant contends that customers shop at the store multiple times a day as they come for a drink and breakfast in the morning then get lunch for their children in the afternoon. The

Appellant tries to offer customers convenience and the ability to get staple foods, drinks, and snacks so they do not have to go to the grocery store all of the time.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the Appellant's stock and facilities and are therefore, indicative of trafficking.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at M Food Mart multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second, third, and subsequent transactions in each set are too large to consist of forgotten items.

The store visit observations indicate that there were no signs posted in the store advertising the availability of specials. In addition, there was a small checkout area with one cash register and one EBT POS device for ringing-up SNAP purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store. There were no conveyor belts to expedite high dollar or rapid consecutive purchases. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The Appellant contends that most of the store's customers and the owner have a good a long-term relationship as the owner has operated the store for nearly 12 years. The majority of customers live within a 2.5 mile radius. It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, the record indicates that there are 16 SNAP authorized retailers, including 1 super store and 1 medium grocery store, located within a 2.0 mile radius of M Food Mart that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than M Food Mart and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record also indicates that SNAP customers who shopped at M Food Mart during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

5 U.S.C. § 552 (b)(7)(E).

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Transactions (Charge Letter Attachment 2)

This charge letter Attachment lists 60 SNAP transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

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

The FNS store visit inventory report and photos indicate that the firm is approximately 1,925 square feet in size with no additional storage outside of public view. The store visit observations also show that M Food Mart offers a minimal stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, only one variety of fresh produce (bananas) in minimal amounts, and lacks an abundant depth and breadth of staple foods. Some of the store shelves were empty/scantily filled and the only frozen food item in stock was ice cream. In addition, the firm was deficient in dairy products required under Criterion A stocking milk only.

The store visit inventory report and photos also show only a few expensive eligible foods in stock (most in minimal quantities) that would account for these large amounts. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that because of the COVID-19 pandemic, the store next to the Appellant closed down causing more customers to shop at the subject firm. Many restaurants are also closed, so the Appellant can offer a quick meal in their place. This accounts for the surge in use of EBT. With regard to these contentions, on March 13, 2020, a national emergency was declared in the United States concerning the COVID-19 outbreak. While there is a potential for an increase or fluctuations in buying it seems likely the majority of these changes would occur in mid-March 2020 and/or after the review period.

A review of the dollar volume for each month of the review period for M Food Mart and all other convenience stores in Etowah County shows a slight increase in dollar volume at the subject firm in the month of February 2020 and a drop in the month of March 2020. In addition, all other convenience stores in the county had no significant change in dollar volume. This suggests that for the review period the current global health crisis did not have much of an impact for the subject firm or area convenience stores. Further, the State of Alabama issued pandemic EBT benefits in May 2020. This means that none of the Alabama SNAP households had extra funds to make larger purchases during the review period.

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

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 M Food Mart have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While M Food Mart does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices.

5 U.S.C. § 552 (b)(7)(E).

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/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping.

The USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the

basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Based on the discussion above and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

CIVIL MONEY PENALTY

As previously indicated, the September 10, 2020 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 July 9, 2020 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 M Food Mart 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

November 24, 2020