

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

M & W Supermarket,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0222091

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of M & W Supermarket (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by FNS’s Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against M & W Supermarket.

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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified from SNAP based on an analysis of EBT transaction data from March 2019 through August 2019. This involved the following transaction patterns which are common trafficking indicators:

- There were a large number of transactions ending in a same cents value.
- There were multiple transactions made from the accounts of individual SNAP households within a set time period.

- The bulk of SNAP households' remaining benefits were depleted within short timeframes.
- There were a large number of EBT manual transactions from SNAP household accounts.
- The firm conducted EBT transactions that were large based on observed store characteristics and recorded food stock.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized M & W Supermarket for SNAP participation as a combination grocery/other store on May 16, 2016. In a letter dated October 28, 2019, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of March 2019 and August 2019. 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 the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made and supporting documentation submitted within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

Agency records show that the charge letter was delivered to the store on October 29, 2019, but the Appellant did not reply.

After further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated November 18, 2019. This letter informed the Appellant that it 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 the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but found that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked November 25, 2019, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an 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 AND 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 permanent 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 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, 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.... [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

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 § 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...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

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(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...

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant apologizes if the store's business practices related to SNAP sales have led USDA to believe that rules and regulations were not consistently followed.
- The store is a mid-sized store in Fort Lauderdale, Florida, and is located approximately 25 miles from Little Haiti in Miami. There are four aisles of shelves with a wide range of food items, including bulk sacks of rice, beans, corn, and flour, as well as cases or assorted canned milk and meat. The store also offers all kinds of fresh fruits and vegetables and a large variety of meat and fish.
- Many of the store's customers are loyal patrons and most are of Haitian and Caribbean descent.
- To make it easy to both customers and employees, food items are rounded up to even-dollar amounts. For example, a 100-pound bag of rice is \$37.00; pinto beans are \$30.00; a 50-pound bag of rice is \$20.00, etc. It has been this way since the store was opened.
- The store's customers usually buy bulk items in a single visit to the store, including rice, beans, flour, corn, meat, and canned milk. They come from Little Haiti and from the neighborhoods that surround the store.

- The store customers make one trip to the store to get food items needed for a full week or perhaps the entire month. That is how Haitian people normally do their shopping.
- The rounded pricing structure and the customers' shopping habits have created this misunderstanding which has prompted USDA to suspend the store's SNAP authorization.
- To help create a transparent view of the store's operations, the Appellant will put into place new procedures that will eliminate the confusion that occurred during the inspection.
- The Appellant will instruct the store's information technology staff to revise unit prices for all items sold in the store so that cents are added to the price.
- The Appellant will also put into place a mandatory employee training program using the training guidelines on USDA's website.
- The store will also implement other policies and procedures that will help USDA inspectors during routine inspections of the store.
- SNAP sales represent between 40 and 50 percent of the firm's total sales.

In support of its contentions, the Appellant submitted 35 color photographs of the store's interior and exterior; 13 pages of printouts from FNS's website related to SNAP rules and program eligibility; four pages detailing M & W Supermarket's compliance and training programs (undated); and a copy of USDA's *SNAP Training Guide for Retailers*.

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

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

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 an August 22, 2019, store visit which was conducted by an FNS contractor 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:

- M & W Supermarket is a combination grocery/other store, roughly 3,500 square feet in size, operating in the city of Lauderdale Lake, Broward County, Florida.
- At the time of the contractor's visit, the firm did not have any shopping carts, but appeared to have a small number of hand-held baskets for customer use.

- The store visit photographs show three cash registers, including two checkout areas with conveyor belts, similar to a supermarket or large grocery store. However, agency records reflect the use of just one EBT point-of-sale terminal for SNAP purchases.
- It appears that the firm uses optical scanners to ring up items on the cash register.
- The store's staple food stock is typical of a small- or medium-sized grocery store, with a wide variety of staple food items as well as snack foods and nonfoods. Similar to other stores in the immediate area, some of the food items at M & W Supermarket appear to cater to Haitian or Caribbean customers.
- Nonfood items at the store include alcoholic beverages, tobacco products, paper goods, and other miscellaneous household merchandise.
- There is no indication from the store visit report that the firm has a special pricing structure, such as even-dollar prices for all merchandise. The posted prices of most items appear to end with a cents-value of 9, such as \$1.69, \$2.89, \$10.99, etc. The contractor's report also states that the firm does not round transaction totals up or down at checkout.
- There is evidence that the firm sells some food items in bulk quantities. For instance, a 50-pound bag of jasmine rice sells for \$48.99; a 50-pound bag of pinto beans sells for \$30.00; and a 50-pound bag of wheat sells for \$20.00. There are also some expensive fresh meats, such as goat meat and oxtails for \$5.99 per pound. The store also sells cases of Nido dry milk, evaporated milk, AriZona beverages, and other miscellaneous food and drink products. While there were clearly a number of expensive items, most merchandise in the store appeared to sell for \$5.00 or less.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small or medium grocery store, where households normally purchase a limited number of items to supplement their overall dietary needs. There was little indication that SNAP households would be inclined to regularly visit M & W Supermarket to purchase large quantities of groceries, especially considering the absence of shopping carts and the availability of much larger grocery stores in the immediate area, including two supermarkets and two superstores within a half mile of the store. 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 with similar inventory.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were a large number of transactions ending in a same cents value. This attachment lists 178 transactions ending in .00, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP redemptions. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). At the time of the contractor's inspection, the store did not appear to have a pricing structure in which most items ended in .00, .25, .50, .75, or other structure that would routinely result in even-dollar transactions. By all indications, most items with a posted price ended with a cents value of 9, such as .59, .79, or .99. As such, the likelihood that large, non-taxed transactions containing randomly-selected items would so frequently and legitimately end in .00 is very low.

In its request for administrative review, the Appellant argued that it has been rounding prices up to even-dollar amounts ever since the store was opened. For instance, the Appellant claims that a 100-

pound bag of rice sells for \$37.00; a 50-pound bag of rice for \$20.00, etc. According to the Appellant, this rounding practice is done to make it easy for both customers and employees.

Unfortunately, the evidence does not support the Appellant's claims. As stated earlier, while there are some items in the store that are clearly priced in whole dollar amounts, the majority of products with posted prices have cents-values ending in 9. When a random selection of such items are added together, it is very rare that the transaction total ends in .00. Further, it is noted that when the contractor conducted its store visit, the clerk on duty stated that transactions were not rounded up or down at checkout. It also makes little sense that a store which uses optical scanners would need to round off transaction amounts for the benefit of its customers or employees. When a scanning system is used at a store and a customer is paying with an EBT card or other electronic method, such as a credit or debit card, even-dollar pricing offers no discernible convenience to either the customer or the clerk processing the transaction. Perhaps such a system would be beneficial if most customers paid with cash, but cash is not the predominant method used in retail shopping today.

Additionally, in reviewing the list of all transactions at the store during the review period, there were many occasions in which the store did not round up or down (see Attachment 5 of the charge letter for several examples). If, as the Appellant claims, the store has been rounding purchases up the entire time the store has been in business, it stands to reason that virtually all transactions would end in .00. But that is clearly not the case. Based on the evidence, it appears that the store is rounding for some customers or transactions, but not for others. Unfortunately, the Appellant has offered no explanation for why this is the case.

One possible reason for the difference between posted prices and transaction totals is that the prices on the shelves do not properly reflect the amount the customer is charged for an item at the point of sale. For example, it seems possible that an item posted as \$5.99 on the shelf could actually be listed as \$6.00 in the scanning system. But the Appellant has offered no evidence that this is the case.

Finally, it is noted that the Appellant has not offered any evidence of its rounding claims. Such evidence might have included itemized cash register receipts which prove that rounding occurred at the point of sale, or perhaps a listing of individual prices from the store's scanning system. Without compelling evidence to prove otherwise, this review finds it reasonable to conclude that the large number of even-dollar transactions in Attachment 1 were likely the result of trafficking violations.

Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 26 sets of transactions (53 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a combination grocery/other store without shopping carts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Such repetitive transactions and dollar amounts at a store like M & W Supermarket are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation. Unfortunately, the Appellant has offered no specific contentions or evidence to show that the transactions in this attachment were legitimate purchases of eligible food. Without such evidence, and because the transactions in Attachment 2 are very unusual in comparison to

similar stores in the area, this review has little option but to conclude that trafficking was a likely cause of the transaction patterns listed in this attachment.

Charge Letter Attachment 3: In a series of transactions, the bulk of SNAP households' remaining benefits were depleted within short time frames. This attachment lists 42 sets of SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

5 U.S.C. § 552 (b)(7)(E). It makes little sense that a household would spend almost the entirety of its SNAP allotment in a single transaction or in a series of rapid transactions at this store.

The Appellant has argued that it is common for customers to travel from as far away as Little Haiti in Miami to visit the store and purchase the food items they need to last them for more than a week or perhaps the entire month. According to the Appellant, this is how Haitian people normally do their shopping – “one full visit per month.”

Unfortunately, the Appellant has offered no evidence to support its claims. Such evidence might have included copies of itemized cash register receipts to prove that the transactions in question were legitimate purchases of eligible food.

Charge Letter Attachment 4: A large number of manually entered EBT transactions were made from the accounts of SNAP households. This attachment lists 325 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. A large number of high-dollar, manually-entered transactions can be an indication that SNAP purchases are occurring without the EBT card being present, which is a violation of program rules, and may be a sign that trafficking is occurring, especially if the card is manually entered at the subject firm but is successfully swiped at other times or at other locations.

Unfortunately, the Appellant has offered neither explanation nor evidence to prove that the transactions in this attachment were legitimate or to prove that there were mechanical problems with the firm's EBT equipment. Without some kind of explanation or documentation, this review is left to conclude that the transactions were likely the result of trafficking.

Charge Letter Attachment 5: The store conducted EBT transactions that were large based on observed store characteristics and recorded food stock. This attachment lists 264 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a combination grocery/other store in the state of Florida. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a combination grocery/other store in Florida was \$33.01. In Broward County, the average was even lower, at just \$23.81 per transaction, but the average transaction in Attachment 5 is almost five times larger than the average purchase amount for this store type.

Given that the Appellant firm has a substantial inventory of staple foods, including high-priced bags of rice, beans, or wheat, and cases of food, it is probable that there would be an occasional purchase where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As such, there may well be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 5. However, as noted earlier, there is no evidence that the firm would be likely to

have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the absence of shopping carts and the availability of much larger stores in the immediate vicinity. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 5 lists 16 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during the review period, including a high of 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many food items it would typically take to add up 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that M & W Supermarket has no shopping carts to help transport large amounts of merchandise, this review finds it difficult to believe that every large transaction in Attachment 5 was a legitimate purchase of eligible food.

Attachment 5 also has an unusual number of repetitive transaction totals in 5 U.S.C. § 552 (b)(6) & (b)(7)(C) intervals. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the contractor's store visit report, there were no special food packages or bundles of food for sale at specific prices that might account for such repetitive totals. As such, it is difficult for this review to comprehend how these transaction patterns were legitimate purchases of eligible food. The Appellant's explanations of rounding or customer shopping behavior do not adequately explain these unusual patterns.

It is worth mentioning here that individual household shopping activity actually supports the agency's position that violations were occurring. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is difficult to imagine what would have enticed this customer to spend much more of its SNAP allotment at M & W Supermarket in a single day than what it spent at a nearby supermarket or superstore, which almost certainly has greater inventory and variety as well as shopping carts to help transport large amounts of groceries.

This review does not doubt that M & W Supermarket sells eligible food items and conducts legitimate SNAP business. But when unusually large transactions form patterns that are substantially different from comparable stores in the area, further evidence from the Appellant is warranted to verify that there is not something more, such as trafficking or other program violations, taking place. In this case, the Appellant has not offered any compelling evidence, such as itemized cash register receipts, to help explain what occurred between the customer and store personnel at the point of sale. Accordingly, it is the finding of this review that trafficking was a likely cause of the unusual transaction patterns found in Attachment 5.

The transactions identified in the charge letter are highly irregular and substantially different from comparable stores in the area. In an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately the Appellant's contentions and evidence do not meet this standard.

It is noted that the Appellant did offer 35 photographs of the store, but these photographs are largely similar to the photographs that were taken by the contractor at the time of the store visit, and thus, are of little evidentiary value in this matter. As the Appellant has offered no evidence

related to the transactions themselves, the preponderance of the evidence most assuredly leans in the agency's favor.

Remedial Actions Taken

It is the Appellant's belief that its rounding practices and its customers' shopping habits have created a misunderstanding which prompted USDA to disqualify the store. To alleviate these issues and to eliminate the confusion that occurred during the contractor's inspection, the Appellant will put new procedures into practice. For example, the Appellant will instruct the store's IT staff to revise unit prices for all items sold in the store so that cents are added to the price. It will also put into place a mandatory employee training program using the training guidelines on USDA's website, and will implement other policies and procedures that will help USDA inspectors during routine inspections of the store.

With regard to these proposed corrective actions, it must be made clear that this review is limited to the facts that existed at the time the alleged violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or that will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty on the basis of alleged or planned corrective actions implemented after the discovery of program violations. Accordingly, the firm's planned remedial actions do not provide a valid basis for reversing the agency's disqualification determination.

Hardship to Appellant and SNAP Recipients

The Appellant contends that SNAP sales represent between 40 and 50 percent of the firm's total business. This contention implies that a permanent disqualification will not only cause financial hardship to the business, but will create a hardship to SNAP recipients who buy food items from the store.

With regard to the insinuation that SNAP recipients will experience hardship if the firm is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As to the insinuation that the business will suffer financially if the disqualification is upheld, 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.

Therefore, the Appellant's contention regarding the firm's SNAP sales percentages does not provide a valid basis for dismissing the charges or for modifying the penalty imposed.

Civil Money Penalty

The Retailer Operations Division determined that the Appellant was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The record shows that the Appellant did not reply to the charge letter, and thus did not meet the required deadlines for this alternative penalty. The training materials provided by the Appellant with its request for administrative review were submitted after the required 10-day period and cannot be considered in relation to a possible CMP. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify M & W Supermarket from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, M & W Supermarket, 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 decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the 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.

JON YORGASON
Administrative Review Officer

March 18, 2020