

U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302

Main Street Food Center Inc, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Retailer Operations Division, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**Case Number: C0184109**

**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 Main Street Food Center Inc (hereinafter “Food Center”) by the Retailer Operations Division (hereinafter “ROD”).

**ISSUE**

The issue accepted for review is whether ROD 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 Food Center on March 9, 2016.

**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 January 22, 2016, ROD informed the Appellant that his firm was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In a telephone conversation with ROD staff on February 5, 2016 and in letters received by ROD on February 3, 2016 and March 7, 2016, the Appellant, through his accountant/counsel, provided explanations for the questionable SNAP transactions outlined in the January 22, 2016 Charge Letter.

After giving consideration to the firm's replies and the evidence of the case, ROD notified the Appellant, in a letter dated March 9, 2016, that his store was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked March 21, 2016, the Appellant, through counsel, appealed ROD's assessment and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means 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**

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. **7 USC 2018 (b)(7)(e)**.

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)(iii) states, *inter alia*:

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.

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from August 2015 through December 2015. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value **7 USC 2018 (b)(7)(e)**;
- There were multiple transactions made from individual benefit accounts in unusually short time frames; and
- There were excessively large purchase transactions made from recipient accounts.

## **APPELLANT'S CONTENTIONS**

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

In response to the specific patterns of EBT transaction characteristics that are indicative of trafficking, the Appellant, through counsel, contends the following:

- During the five month review period, the Appellant had hired new cashiers who were responsible for ringing up the SNAP transactions that were listed in Attachments 1 and 2 of the Charge Letter;
- These questionable SNAP transactions were not deliberate but were the result of a lack of understanding of the SNAP rules and regulations;
- The SNAP violations were conducted by new store employees without the Appellant's involvement, knowledge or approval;
- In order to ensure that SNAP benefits do not occur in the future at Food Center, the Appellant has corrected the actions of the new store cashiers;
- The Appellant has owned Food Center for over four years and he had never been accused of or been cited for any SNAP violations prior to receiving the Charge Letter;
- The unusual number of transactions ending in a same cents value are the result of new store cashiers charging less for the actual purchases made by SNAP customers by rounding down the transaction;
- The multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of new store cashiers allowing SNAP customers to make multiple transactions in short timeframes;
- The excessively large purchase transactions are not large considering that many SNAP households have five or more family members;
- Per the signed petitions submitted to FNS, a permanent SNAP disqualification of Food Center will impose a hardship on the many area SNAP customers who depend upon the store for their staple food needs;
- A permanent SNAP disqualification of Food Center will impose a severe financial hardship on the store and will destroy the business; and
- The Appellant is requesting that FNS consider issuing an official warning in lieu of permanently disqualifying Food Center from the SNAP.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Food Center to participate in the SNAP on July 30, 1998. Current case file information indicates that FNS has categorized Food Center's store type as a convenience store. The case file also indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a

July 10, 2015 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:

- Food Center is approximately 2,000 square feet in size and it does not have a storage area outside of the public view;
- Food Center is located in a suburban, commercial area of Peekskill, New York;
- There were no hand-held baskets or shopping carts available for customer use;
- Food Center has one cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- There was no optical scanner or conveyor belt for the speedy processing of transactions;
- Food Center has a food stock that is typical of convenience stores and it offers customers a moderate variety and amount of eligible staple foods for sale;
- There were no meat/seafood specials or bundles that might sell for high prices;
- Food Center does not stock any high priced food items. The highest priced food items stocked at Food Center appeared to be deli meats and cheeses sold by the pound. However, these food items are also commonly stocked at many of the stores in New York and are not unique to this store;
- The store owner, Bruno Gonzalez, indicated during the store visit interview that Food Center does not extend credit to customers nor does the store offer bulk foods at a discounted rate;
- No signs were posted in the store advertising the availability of bulk foods offered at a discounted rate;
- The checkout counter has limited space, is obstructed by an ice cream freezer, and does not provide a space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- There were no fresh or frozen meats, poultry, or fish items;
- Food Center has a deli section in which deli meats and cheeses are sold by the pound;
- Meat items available for sale included pork sausage, hot dogs, bacon, deli meats, canned/potted meat, canned fish, meat jerky, and eggs;
- Food Center stocked a moderate amount and variety of fresh produce items to include bananas, limes, apples, tomatoes, jalapeno peppers, oranges, corn, carrots, lettuce, onions, white potatoes, plantains, jicama, etc.;
- Food Center stocked no frozen fruits or vegetables for sale;
- The only frozen foods stocked at Food Center was ice cream;
- Other staple foods available for purchase included such items as 100% juice, cakes/pastries, pasta, bread, cereal, rice, canned fruits and vegetables, milk, snack foods, etc.;
- Some of the canned fruits and vegetables stocked at Food Center were dusty and dirty indicating that these items are not purchased on a regular or consistent basis;

- Food Center stocked a very limited amount and variety of infant foods to include infant cereal and infant fruits and vegetables;
- Food Center sold hot and cold prepared foods not intended for home preparation and consumption to include such items as prepared salads (chicken salad, tuna salad, egg salad, fresh mozzarella salad, tomato and mozzarella salad, antipasto salad, shrimp salad, macaroni salad, potato salad, cole slaw, etc.); breaded (cooked) chicken cutlets; grilled chicken cutlets; sandwiches made out of assorted deli meats and cheeses; specialty sandwiches such as hot roast beef sautéed with peppers and onions with melted mozzarella on garlic bread; chicken cutlet, bacon, swiss cheese or fresh mozzarella with lettuce, tomato and mayonnaise; fried fish on white bread with lettuce and tomato, etc.; french fries; cooked beef oxtails; cooked pork skin cracklings; etc. Food Center had counters with chairs that were for use by store customers in eating their in-store prepared and cooked foods;
- Much of the remaining food stock consisted of accessory food items to include such items as candy and gum, carbonated and uncarbonated drinks, condiments, salt and other seasonings, barbecue sauce, marshmallows, salad dressing, baking powder, sugar, pancake syrup, corn starch, gravy, etc.; and
- Food Center stocked a large supply of ineligible nonfood items such as household cleaning supplies, alcoholic beverages, tobacco products, paper products, hot foods, clothing (hats, gloves), automotive supplies, laundry detergent, lottery tickets, health and beauty aids, over-the-counter medications, lighter fluid, umbrellas, infant diapers, etc.

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

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

## **Appellant Was Not Aware of, Did Not Approve of, and Was Not Involved in the SNAP Violations**

The Appellant contends that during the five month review period, he had hired new cashiers who were responsible for ringing up the SNAP transactions that were listed in Attachments 1 and 2 of the Charge Letter. These questionable transactions were not deliberate but were the result of a lack of understanding of the SNAP rules and regulations. The SNAP violations were conducted by new store employees without the Appellant's involvement, knowledge or approval. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Food Center. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, or family member was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on July 30, 1998, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that 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...". The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "Disqualification ... shall be permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. The Appellant's implied contention that he was not involved in the violative SNAP transactions and that he did not know or approve of any violations of program regulations at the store cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless

the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

### **Preventing Future SNAP Violations from Occurring**

The Appellant contends that in order to ensure that SNAP benefits do not occur in the future at Food Center, he has corrected the actions of the new store cashiers. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. 7 USC 2018 (b)(7)(e). Therefore, the Appellant's contention that he has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **First Time Violator**

The Appellant contends that he has owned Food Center for over four years and he had never been accused of or been cited for any SNAP violations prior to receiving the Charge Letter. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Unusual Number of Transactions Ending in a Same Cents Value (Charge Letter Attachment 1)**

The Appellant contends that the unusual number of transactions ending in a same cents value are the result of new store cashiers charging less for the actual purchases made by SNAP customers by rounding down the transaction. 7 USC 2018 (b)(7)(e). With regards to the Appellant's contention, it is important to note that during the July 10, 2015 store visit interview the store owner, Bruno Gonzalez, did not indicate to the Reviewer that Food Center rounds up or down total purchase transactions to the nearest whole, half, or quarter dollar nor did he indicate that the rounding down of purchase totals is a customary practice of the store. In addition, the Reviewer noted during the store visit that there were no signs or promotions in Food Center advertising that transactions are rounded down to the nearest whole, half, or quarter dollar. 7 USC 2018 (b)(7)(e). It is also important to note that, if it is a customary practice for store employees to "round" SNAP purchases to the nearest whole, half, or quarter dollar, there really is no reason for a retail food store to round SNAP purchases to the nearest whole, half, or quarter dollar since EBT cards work similarly to a debit card so rounding down transactions would not make it easier for the customer or the store cashier as there is no "change" or cash involved in SNAP transactions.

In addition, the store visit photos taken by the contracted Reviewer indicated that the prices of many of the staple foods stocked at Food Center ended in a price variation of



\$x.x9. During the five month review period, Food Center conducted a total of 5,389 EBT transactions. Of these, there were 2,057 transactions considered by FNS in the analysis of these same cents value transactions. 7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e). Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. 7 USC 2018 (b)(7)(e). The Appellant's descriptions of its business operations and, likewise, the information in the record reflecting these operations, do not explain the activity. As noted, information in the record regarding the firm's pricing and inventory, including the store visit, reveals no basis for SNAP customers' apparent attraction to the firm, there being no superior selection of staple foods, no price advantage, no package or bulk items, and no custom or special services rendered.

As mentioned earlier, during the five month review period Food Center conducted a total of 5,389 EBT transactions. Of these, there were 2,057 transactions considered by FNS in the analysis of these same cents value transactions. 7 USC 2018 (b)(7)(e).

**Multiple Transactions Made from Individual Household Accounts in Short  
Timeframes  
(Charge Letter Attachment 2)**

The Appellant contends that the multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of new store cashiers allowing SNAP customers to make multiple transactions in short timeframes. 7 USC 2018 (b)(7)(e). An analysis of client shopping patterns in the subject store and other area grocery stores and supermarkets show that access to better stocked stores is not an issue for SNAP households who shop at Food Center (i.e., SNAP customers have transportation available to them to reach other area authorized SNAP stores). Besides it being unusual that other stores in the area do not display rapid consecutive transaction patterns as does the subject store, although they all share some of the same customer base, this explanation does not serve as sufficient justification for why this pattern of EBT transaction activity occurred so rapidly at Food Center, especially when one considers the nature and extent of the store's stock and facilities. Yet, ROD cited several households which made multiple transactions within unusually short timeframes. 7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e)

It is important to note that while there are no limits in the SNAP regulations on the number of times EBT cards may be used or the amount of eligible foods that may be purchased by SNAP households, the EBT transactions made at Food Center 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 store's stock and facilities and are indicative of trafficking. While Food Center may, in fact, be located in an area that is close to a large number of participating SNAP households, it is not the only authorized SNAP store in the area at which SNAP customers can purchase food. Located within a 2.0 mile radius of Food Center are 25 authorized SNAP stores including 4 supermarkets and 1 super store. It is evident that there are plenty of shopping choices for SNAP recipients other than the subject store.

### **Excessively Large Purchase Transactions (Charge Letter Attachment 3)**

The average SNAP transaction during the review period for convenience stores in New York was \$8.93. 7 USC 2018 (b)(7)(e). These large transaction amounts are not consistent with the store's inventory which contains no fresh or frozen meats and a moderate amount of fresh produce. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. 7 USC 2018 (b)(7)(e).

#### **7 USC 2018 (b)(7)(e)**

The Appellant contends that the excessively large purchase transactions are not large considering that many SNAP households have five or more family members. It is important to note that at the time of the store visit, the contracted Reviewer noted that Food Center did not carry a large enough staple food inventory to cover these large purchase transactions. The Reviewer noted that Food Center contained a moderate amount and variety of staple food items, which together with the store's facilities, is not consistent with questionable transactions as frequent and as large as those cited. The Reviewer also observed that the space within the subject store was fairly small and a little congested. The store had only a few food shelves that were devoted entirely to food items. A good portion of the store's floor space was primarily devoted to ineligible nonfood items including household cleaning supplies, alcoholic beverages, tobacco products, paper products, clothing (hats, gloves), automotive supplies, laundry detergent, lottery tickets, health and beauty aids, over-the-counter medications, lighter fluid, umbrellas, infant diapers, etc. The store visit photos also indicated that some of the canned fruits and vegetables stocked at Food Center were dusty and dirty indicating that they are not purchased on a regular or consistent basis.

It is important to note that while there are no limits in the SNAP regulations on the number of times EBT cards may be used or the amount of eligible foods that may be purchased by SNAP households, the EBT transactions made at Food Center 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 store's stock and facilities and are indicative of trafficking. While Food Center may, in fact, be located in an area that is close to a large number of participating SNAP households, it is not the only authorized SNAP store in the area at which SNAP customers can purchase food. Located

within a 2.0 mile radius of Food Center are 25 authorized SNAP stores including 4 supermarkets and 1 super store. There are a total of 31 stores located within a 3.0 mile radius of Food Center. These retail food stores are authorized to participate in the SNAP where household can and do also shop, but which do not display EBT transaction patterns similar to those displayed by Food Center. Many of these authorized SNAP stores are larger than Food Center and carry a greater variety and volume of staple food items at comparable, or better, prices as compared to the subject store. Therefore, the implication that many SNAP customers have to depend upon Food Center to obtain the majority of their staple food needs as there are no other authorized retail stores in the area or because they cannot reach other SNAP authorized stores due to a lack of transportation is unsubstantiated as there are a large number of authorized SNAP stores available to them that can, and do, meet their nutritional needs.

It is important to note that Food Center is a convenience store which is normally used by store customers to make a quick stop to purchase a food item or two needed in preparing the evening meal or because they forgot to purchase a food item or two when shopping earlier at a larger retail store (i.e., large grocery store or supermarket, etc.) for their family's weekly or monthly nutritional needs. It is also important to note that because Food Center is a "convenience store" the items offered for sale are most likely more expensive than the same items that are offered at larger retail stores such as major chain supermarkets or super stores. As such, since there are many SNAP authorized stores located in the area of Food Center at which SNAP customers can, and do utilize for their staple food needs it is unlikely that these customers would choose to shop at Food Center and spend more for the food items that they can also get at a less expensive price at other area SNAP stores. It is also important to note that the prices of foods available for sale at Food Center are most likely comparable to the prices of foods that are available for sale at other area convenience stores. During the five month review period, the average EBT transaction at an average convenience store located in the area of Food Center was \$8.93. However, the average EBT transaction at Food Center during the same timeframe was \$12.00. There is no logical reason as to why the average EBT transaction at Food Center was so much higher as compared to its competitors (other convenience stores in the area) which stock a comparable, or greater, variety and selection of staple foods in all four staple food categories at comparable, or better, prices.

As is indicated in the below table, the Retailer Operations Division compared the total transaction dollar volume and the average transaction dollar amount of Food Center to that of other convenience stores in New York. In comparison to other convenience stores in New York, Food Center's total transaction dollar volume is well over three times higher than the state average and the average transaction dollar amount is also above the state average. Since Food Center is a convenience store selling as wide a variety of foods as other convenience stores located in New York, it is questionable as to why there is such a large variance between the EBT transactions at the subject store and other convenience stores in New York.

**7 USC 2018 (b)(7)(e)**

The Retailer Operations Division analyzed the purchasing habits of several SNAP

customers who utilized Food Center for SNAP purchases during the review period. Below are a few examples of SNAP households who not only shopped at Food Center during the review period, but in most instances they made higher purchases at the subject store as compared to stores of comparable, or larger, sizes. These examples indicate that SNAP customers have transportation available to them to reach and shop at other area authorized SNAP stores and do not depend upon Food Center for their staple food needs. As a reminder, Food Center is a convenience store which offers a moderate food stock. This store does not appear to have any unique offerings that would draw people to spend substantially more than the average. The store visit review revealed that there were no special meat or food packages that would justify these numerous suspect purchase amounts. Therefore, there is nothing to indicate any compelling reason for these SNAP households to consider Food Center a first choice destination to fulfill large purchases of foods.

SNAP client data analyzed over the review period show that most SNAP clients shopping at Food Center also traveled to full service supermarkets and/or super stores in and around the Westchester County area. The SNAP clients are making what would appear to be normal food purchases at supermarkets and super stores on the same day, day prior, or day after making suspicious transactions at Food Center. (Note: In the below Tables, CS = Convenience Store; CO = Combination Grocery Store; SG = Small Grocery Store; MG = Medium Grocery Store; SM = Supermarket; and SS = Super Store).

**SNAP Household #1:**

7 USC 2018 (b)(7)(e)

**SNAP Household #2:**

7 USC 2018 (b)(7)(e)

**SNAP Household #3:**

7 USC 2018 (b)(7)(e)

**SNAP Household #4:**

7 USC 2018 (b)(7)(e)

**SNAP Household #5:**

7 USC 2018 (b)(7)(e)

The aforementioned SNAP clients as well as others who shopped at Food Center have access to transportation as they are travelling a few miles and beyond to shop at full-line supermarkets and/or super stores. However, the transaction patterns observed are only exhibited at Food Center. This transaction activity is a good indicator that trafficking is

possibly occurring at Food Center.

The Appellant did not submit any vendor invoices to FNS for foods purchased for Food Center during the five month review period which would validate that a significant amount of staple foods had been purchased to cover the EBT transactions that were listed in the Charge Letter. Therefore, a vendor analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided vendor receipts/invoices to FNS and the receipts/invoices indicated that Food Center had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as an unusual number of even dollar transactions and rapid and consecutive transactions by individuals during the same store visit or in a single day. Even the large transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a moderate variety of stock in the store, no fresh or frozen meats, no frozen fruits or vegetables, a moderate variety of fresh produce items, a greater variety of foods at comparable or lower prices at other stores, including area supermarkets and super stores at which many customers also shopped, no shopping carts or hand-held baskets for use by store customers, and little counter space to place food for purchase at the checkout counter. Even with sufficient food stock at Food Center to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

In summary, the store's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average transaction amount, total dollar volume, and total purchase count of similar type stores. Government analysis of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

### **SNAP Disqualification Will Impose Hardship on SNAP Customers**

The Appellant contends that per the signed petitions submitted to FNS, a permanent SNAP disqualification of Food Center will impose a hardship on the many area SNAP customers who depend upon the store for their staple food needs. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not

applicable to the present case. It is also important to note that there are 20 authorized SNAP stores located within a 1.0 mile radius of Food Center where SNAP households can and do also shop, but which do not display EBT transaction patterns similar to those displayed by the subject store. Most of these authorized stores carry a comparable, or greater variety and volume of staple food items at comparable, or better prices as compared to the subject store.

### **SNAP Disqualification Will Impose Financial Hardship**

The Appellant contends that a permanent SNAP disqualification of Food Center will impose a severe financial hardship on the store and will destroy the business. 7 USC 2018 (b)(7)(e). To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Request to Issue a Warning in Lieu of Permanent SNAP Disqualification**

The Appellant is requesting that FNS consider issuing an official warning in lieu of permanently disqualifying Food Center from the SNAP. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . shall be permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

### **CIVIL MONEY PENALTY**

As previously indicated, the March 9, 2016 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated January 22, 2016 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 Main Street Food Center Inc is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (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 (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

February 15, 2017

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

DATE