

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

Mansha Allah Mart,

Appellant,

v.

Case Number: C0206490

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 a permanent disqualification of Mansha Allah Mart (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the 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 Mansha Allah 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.”

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from September 2017 through February 2018. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual 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 majority or all of individual recipients' benefits were exhausted in unusually short periods of time.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized Mansha Allah Mart for SNAP participation as a small grocery store on November 15, 2016. In a letter dated March 19, 2018, 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 September 2017 and February 2018. 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 within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In multiple letters and e-mails between March 28, 2018, and December 11, 2018, the Appellant, through multiple representatives, responded to the charges, denying that that the firm had engaged in trafficking.

In a letter dated April 1, 2018, the Appellant, through its first authorized representative, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), contended that FNS had not compiled any actual evidence or proof of trafficking and argued that the list of transactions included with the charge letter were valid SNAP transactions. The Appellant then made the following arguments related to the specific transaction patterns:

- *Transactions ending in a same cents value:* The firm has the sole discretion to sets its retail prices to whatever it deems appropriate. Such pricing is not a violation of any local, state, or federal law.
- *Multiple transactions made from the same household account:* Most of the firm's customers are immigrants from Somalia. Customs, culture, shopping patterns, and food purchases are all different from most Americans. The firm is also located next to a large mosque, and many of the mosque's attendees shop at the firm and do their shopping for the month in one, two, or three trips to the store. Sometimes people shop and then shortly thereafter, check their SNAP balance and then make another purchase. If these same types and amounts had occurred at a supermarket, no one at FNS would have flagged them.
- *Depletion of SNAP benefits in unusually short periods of time:* It is not unusual for immigrant shoppers to exhaust most or all of their SNAP benefits in a short period of time, as large families make large purchases and then check their balance and continue shopping. The Appellant also sells a lot of items in bulk.
- *Excessively large transactions:* A typical American family of three or four spending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on food would not be unusual by FNS standards, but a transaction by an immigrant family of eight or 10 spending the same amount is deemed by FNS as excessively large. Perhaps FNS is being excessively racist.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) contended that FNS had rushed to judgment without “one iota of tangible evidence,” and claimed that the charges were bogus and “a miscarriage of justice.”

It is noted that in his initial response on March 28, 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) requested case file information from FNS in a request made under the Freedom of Information Act (FOIA). This FOIA request began to be processed, but 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not pay the required processing fee, so the FOIA case was closed on May 24, 2018.

On approximately April 25, 2018, attorney 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of Black Law PLLC took over as representative of the firm. In a letter dated June 11, 2018, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) submitted his own FOIA request, asking for the same materials that had earlier been requested by 5 U.S.C. § 552 (b)(6) & (b)(7)(C) along with a few additional items. The case record shows that the agency’s response to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) FOIA request was completed on June 19, 2018, and delivered to Appellant’s counsel on June 21, 2018. The record further shows that Appellant’s counsel declined to appeal the FOIA response.

In a letter dated October 12, 2018, Appellant’s new counsel submitted an additional response to the charge letter, again categorically denying that the firm was engaged in trafficking. The Appellant also submitted a six-page signed declaration from owner 5 U.S.C. § 552 (b)(6) & (b)(7)(C) outlining the firm’s response to the allegations. The Appellant’s key arguments are as follows:

- Mansha Allah Mart is a store that serves primarily Somali and other Muslim immigrant communities in Seattle, Washington, and many members of these communities qualify for SNAP benefits.
- The store is located next to the Abu-Bakr Islamic Center of Washington. The store is built on property owned by the Islamic Center. The Center is both a mosque and a gathering place for members of the local Muslim community and many events are hosted there. The family or individual hosting the event often provides food for attendees.
- The Appellant adopted many of the previous store owner’s systems, including vendors, equipment, pricing, etc. The previous owner did not provide any SNAP training or educational materials about SNAP, so the Appellant took time to review videos about SNAP on YouTube, but never received any formal training. Appellant showed its employees how to use the EBT terminal and explained that SNAP benefits could only be used for qualifying food purchases.
- Appellant takes extra care to ensure that it does not intentionally or accidentally make mistakes when it comes to accepting EBT.
- *Transactions ending in a same cents value:* When the Appellant assumed ownership of the firm, many of the previous owner’s prices ended in 99 cents, while some ended in zero cents. Consequently, many transactions ended in a cents value of .99 or .98, or other variations resulting in multiple items ending in 99 cents, or the addition of an item ending in 99 cents and an item ending in zero cents. The reason that so many transactions ended in the same cents value is a function of the old pricing system in the store. Another reason is that the store sells meat items in bulk, and customers buying the same amount of meat

would pay the same price. Since taking over the store, the Appellant has adjusted the pricing system and does not anticipate that it will run into the same issue in the future.

- *Multiple transactions made from the same household account:* Many customers make multiple purchases during trips to the store. This usually occurs when customers purchase the items they need most and then ask the clerk if there are any funds remaining on the card. If funds are available, the customers will then purchase additional items. Additionally, customers holding events at the adjacent Islamic Center will often make multiple purchases while hosting celebrations to meet the needs of their guests. It is also common for households to purchase food for an event at the Islamic Center and then later return to the store to purchase food to take home. During long events, people may visit the store several times over the course of a day to buy food for themselves and their families. Finally, as with other grocery stores, customers will sometimes make a purchase and then realize that they need additional items and make a second purchase shortly after the first.
- *Depletion of SNAP benefits in unusually short periods of time / Excessively large transactions:* Many customers shop at Mansha Allah Mart for items they cannot easily get elsewhere, such as halal meat, rice, other staples, and spices. These households often make single monthly trips to the store to buy these items in bulk, and often spend most or all of their monthly allotment in order to maximize benefits in obtaining these items. Large households leads to large grocery bills. Additionally, customers will often make an initial purchase consisting of the items they need the most, and then inquire how much is left in the account so they can spend the rest during the same shopping trip. Some customers purchase large amounts of food to feed everyone in attendance at celebrations they are hosting at the Islamic Center. Religious celebrations are culturally important and the hosts of such celebrations are expected to provide enough food for all of their guests, which is why customers frequently exhaust all of their SNAP benefits in preparation for such celebrations. Customers will even spend their own money in addition to SNAP benefits to ensure that there is enough food for an event at the Islamic Center. Finally, the store sells halal meat in bulk, including goat and camel meat that is used in traditional Somali dishes. Meat is expensive to purchase, especially if a customer buys a large amount of meat for a barbeque or an event at the Islamic Center. Receipts provided by the appellant reflect purchases of meat frequently exceeding **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- Appellant has never engaged in trafficking and would never do such a thing because it is illegal and morally wrong. The Appellant works very hard to do things the right way and would never do anything to jeopardize the business.
- The store plays an important role in the local Muslim community and allows local Muslims to obtain food they otherwise would not have access to.
- Appellant does not believe that any of its employees have engaged in trafficking. It has been made very clear to them that such behavior is absolutely prohibited.
- The store is relatively unique compared to many other grocery stores of similar size due largely to the firm's clientele and cultural practices.

In support of the above responses, the Appellant submitted a large amount of documentation, including roughly 80 inventory invoices from a variety of wholesale vendors; an accounting spreadsheet summarizing inventory purchases; seven signed statements from apparent SNAP

customers attesting to shopping at Mansha Allah Mart, but claiming to have never engaged in trafficking (all seven statements are identical except for the signature); approximately 200 itemized cash register receipts from the month of September 2018; and a computer printout of information about the adjacent Abu-Bakr Islamic Center of Washington.

The record shows that the Retailer Operations Division gave substantial and thorough attention to the Appellant's multiple responses and documentation. After considering the Appellant's responses to the charges and further evaluating the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 14, 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 regulations, but determined 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 February 27, 2019, the Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of 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....

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, through counsel, did not submit any new contentions with its request for administrative review except to claim that the finding of trafficking is unsupported by the evidence. In support of this claim, the Appellant submitted copies of the same documents and contentions that were previously submitted to the Retailer Operations Division.

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 contentions and evidence presented, including any not specifically summarized or explicitly referenced in this document.

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 during a February 2, 2018, 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:

- Mansha Allah Mart is a small grocery store, approximately 1,000 square feet in size, operating in the city of Tukwila, King County, Washington.
- At the time of the contractor's visit, the firm did not have any shopping carts or handheld shopping baskets, which is typical for stores of this size. Customers shopping in such stores generally purchase only as much food as they can carry in their arms.

- The store visit photographs show one cash register for food purchases and one EBT point-of-sale device.
- The checkout area consists of a small glass countertop where items can be placed for purchase. The constricted checkout area is not suitable for conducting large or rapid transactions as there is little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- The store very clearly caters to an immigrant Muslim population, with its offerings of halal meats and groceries and other African and Asian specialties. Although small in size, the store has sufficient inventory for SNAP authorization.
- SNAP-eligible, non-staple accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including clothing, cleaning supplies, personal care items, and other miscellaneous household merchandise.
- The store sells a variety of halal meat items, including goat, camel, fish, beef, and chicken. Most meat items appear to be cut into small cubes and packaged in quart or similar-sized plastic bags. There is no indication that the store sells large individual meat items, such as whole goat or large cuts of beef.
- The store carries a number of expensive food items, such as large canisters of Nido dry whole milk for \$39.99; 60.9-fluid-ounce bottles of sesame oil for \$24.99; 2.5-gallon containers of corn oil for \$22.99; and 101-ounce bottles of olive oil for \$19.99. The store also sells large bags of rice, flour, and sugar, so it is expected that some individual transactions will be large.
- There is no indication from the store visit report that the firm has an unusual pricing structure. While there are a small number of items ending in .00, the vast majority of prices appear end in 9, such as \$3.99, \$6.99, etc. This is a very common pricing structure among retail food stores.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small ethnic grocery store, particularly one that caters to an east African or Muslim immigrant population. It is likely that such households would regularly visit this store to make purchases of culturally important food items. However, due to its size and overall inventory, there is little indication that SNAP households would be inclined to regularly visit Mansha Allah Mart to purchase very large quantities of groceries, especially considering the absence of shopping carts and baskets to help transport large amounts of food and the availability of larger SNAP-authorized stores nearby, including two medium-sized grocery stores and one superstore less than a mile away. 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 nearby, similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 234 transactions ending in .98, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits 5 U.S.C. § 552 (b)(7)(E); and 604 transactions ending in .99, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 5 U.S.C. § 552 (b)(7)(E). The likelihood that so many non-

taxed transactions, which would typically consist of random items from the store's shelves, would so frequently and legitimately end in .98 or .99 is very low.

The Appellant has argued that when it assumed ownership of the firm, many of the previous owner's prices ended in 99 cents, while some ended in zero cents. The Appellant contends that this resulted in many transactions ending in a cents value of .99 or .98.

Unfortunately, this explanation seems unlikely. Based on the store visit report, many items have prices ending in 99 cents. In fact, most items appear to have this pricing structure. It appeared that only a small number of items ended in .00. As such, if a customer purchased more than one item ending in .99 or any variation of 9, the chance that the transaction total would ultimately end in .99 is extraordinarily low. And the larger the transaction is, the more likely it is that the customer purchased multiple items, and the less likely that the transaction total would end in .99. And yet on 127 different occasions during the review period, the Appellant conducted transactions exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and ending in 99 cents. As noted earlier, there was no evidence that the firm sold items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the contractor's report, the most expensive item in the store was a can of Nido for \$39.99. Consequently, legitimate transactions larger than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would almost certainly involve the purchase of many items, most of which would likely have a price ending in 99 cents, making transactions totals ending in 99 cents very rare.

Unfortunately, the Appellant has not offered sufficient evidence, such as itemized cash register receipts that correspond to the transactions in Attachment 1, to demonstrate that the transactions were legitimate purchases of eligible food. Without such evidence, and because the transactions in Attachment 1 are highly irregular, it is reasonable for this review to conclude that the transactions in question were likely the result of trafficking.

Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 53 sets of transactions (107 transactions in all) t5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small grocery store like Mansha Allah Mart, which has no shopping carts or baskets to help transport that amount of merchandise. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such patterns and transaction totals at a small grocery store are highly unusual and are often an indication of trafficking. As such, these transactions warrant further explanation and proof of legitimacy.

The Appellant's original counsel argued that most of the firm's customers are immigrants from Somalia, and claimed that customs, culture, shopping patterns, and food purchases are all different from most Americans. Appellant's counsel further claimed that if these same types and amounts had occurred at a supermarket, no one at FNS would have flagged them.

This review acknowledges that the customers who shop at Mansha Allah Mart likely have different customs and shopping habits. But are the customs and habits that much different from customers who shop at other halal stores in the vicinity, including stores catering to the Somali

immigrant population? The transaction patterns at Mansha Allah Mart are substantially different from similar stores in the area.

As to the contention that FNS would not have flagged similar transactions at a supermarket, Appellant's original counsel has offered no evidence to substantiate this claim.

The Appellant, in its signed declaration, made a similar argument related to customs and shopping habits, claiming that customers holding events at the adjacent Islamic Center will often make multiple purchases while hosting celebrations to meet the needs of their guests. The Appellant also stated that it is common for households to purchase food for an event at the Islamic Center and then later return to the store to purchase food to take home.

While all of this may be true, it is nonetheless anecdotal, which, by itself, does not persuade this review to reverse the disqualification determination. Absent from the Appellant's argument is evidence from the review period, such as itemized cash register receipts, to prove that the specific transactions in question were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to determine that the patterns found in this attachment were likely the result of trafficking.

Charge Letter Attachment 3: In a series of transactions, the majority or all of an individual recipient's benefits were exhausted in unusually short periods of time. This attachment lists 83 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 stated that it is not unusual for customers to spend most or all of their allotment at this store to maximize their benefits in obtaining culturally important items, such as halal meat, rice, and other staple foods. By buying in bulk, customers often expend all or nearly all of their monthly benefits. The Appellant further explained that customers often make an initial purchase consisting of the items they need most and then inquire as to how much is left on the SNAP account. If there are funds remaining, they may spend the rest of it during the same shopping trip.

These arguments may be true to some degree, but if these shopping habits were true of most immigrant families in the area, it stands to reason that other ethnic stores in the vicinity would experience the same transaction patterns. But that is simply not the case. The transaction patterns in Attachment 3 are substantially different from those of nearby similar-sized stores with similar inventory.

Unfortunately, the Appellant has not submitted any compelling evidence to verify its claims. For example, the photos and inventory records are helpful in that they corroborate the types of food available for purchase at the store, but they give little insight into what actually took place at the cash register for the specific transactions in question. Likewise, the Appellant offered roughly 200 itemized cash register receipts, but all of the receipts are dated outside of the review period, so they do not correspond to the transactions in the charge letter. As for the signed customer

statements, this review finds such documentation to be of little evidentiary value. Experience has shown that SNAP recipients rarely admit to trafficking, especially when such an admission could potentially expose them to administrative and/or criminal charges. Customer declarations, affidavits, and petitions routinely attest to irregular transactions being legitimate even when there is strong evidence to suggest otherwise.

Without persuasive evidence to demonstrate that the transactions in Attachment 3 were valid, it is reasonable for this review to conclude that that they were likely the result of trafficking violations.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. This attachment lists 547 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with other small grocery stores in the state of Washington. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in Washington was \$25.59. In King County, the average was a bit higher, at \$33.74 per transaction, but the average transaction in Attachment 4 is more than six times larger than the average purchase amount for this store type.

Given that the Appellant firm has a moderate inventory of staple foods as well as a number of expensive ethnic varieties and large packages, such as rice, flour, and cooking oil, it is likely that there would be an occasional purchase where the transaction amount is high, perhaps exceeding 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, it is almost certain that there are some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 4. However, as noted earlier, this review could find no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from nearby, similar-sized competitors, especially considering the constricted checkout area, the absence of shopping carts and baskets, and the availability of much larger stores in the area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

Attachment 4 lists 80 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 the store's characteristics, including no shopping carts or baskets, this review finds it unlikely that every transaction in Attachment 4 is a valid SNAP purchase.

Included in Attachment 4 are several unusually repetitive transaction totals. For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Of course, with more transactions that occur at a given store, the greater the likelihood that a transaction total will be duplicated. But these stand out as particularly unusual given their frequency and large size. That a number of randomly-selected items would so frequently result in these transaction totals is highly irregular.

5 U.S.C. § 552 (b)(7)(E). No other single dollar amount in Attachment 4 came close to that number.

As with the previous attachments, the Appellant has provided a number of anecdotal explanations to justify the transactions listed in Attachment 4. Unfortunately, the Appellant has not offered any compelling evidence, such as itemized cash register receipts from the review period, to corroborate its claims and prove that the transactions in question were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the transaction patterns found in Attachment 4 were more likely than not the result of trafficking.

As to the Appellant's first counsel's claim of racism, such an argument has no basis in fact. There is no evidence whatsoever that a transaction made by an immigrant family is scrutinized by FNS any more than a transaction made by a "typical American family." When conducting analyses of EBT transaction data, FNS personnel have no knowledge of the ethnicity, race, or immigration status of any household listed in the charge letter.

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

Trafficking Case based on EBT Data

The Appellant, particularly through its original counsel, argued that FNS has not compiled any actual evidence or proof of trafficking. It further claimed that the agency rushed to judgment without "one iota of tangible evidence," and claimed that the charges were bogus and "a miscarriage of justice."

With regard to these contentions, this review acknowledges that a conclusion of trafficking cannot be drawn from transaction data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. FNS's Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which 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.]

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the

transaction activity detailed in the charge letter. This review has thoroughly examined the documentation and information provided by the Retailer Operations Division and has found no evidence to suggest that the agency simply manufactured numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores of similar size, and then completed a comprehensive analysis, including a full evaluation of the Appellant's responses and documentation, before concluding that trafficking was likely occurring.

It is important to restate here that 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. It is the determination of this review that the Appellant's evidence is not sufficient to prove that the transactions listed in the charge letter were, more likely than not, legitimate purchases of eligible food.

Hardship to SNAP Recipients

The Appellant contends that the store plays an important role in the local Muslim community and allows local Muslims to obtain food they otherwise would not have access to. It further claims that the store is unique compared to other grocery stores of similar size due to the firm's clientele and cultural practices. These contentions imply that SNAP households in the area would experience hardship if the disqualification of Mansha Allah Mart is upheld.

With regard to these contentions, 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.

Civil Money Penalty

As noted earlier, the Retailer Operations Division determined that the Appellant firm 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 training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must 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 documentation within designated timeframes. The case record shows that the Appellant did not request a trafficking civil money penalty when it replied to the charge letter and it provided no evidence which would indicate that the firm had a compliance policy or training program of any kind. Therefore, in accordance with 7 CFR § 278.6(b) and (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 Mansha Allah Mart 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 and evidence in this case, the decision to impose a permanent disqualification against the Appellant, Mansha Allah Mart, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 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

June 26, 2019