

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

Mission Mini Market,

Appellant,

v.

Case Number: C0204705

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Mission Mini Market by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Mission Mini Market on March 29, 2018.

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 February 1, 2018, the Retailer Operations Division informed the Appellant that Mission Mini Market 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 letter received by the Retailer Operations Division on March 1, 2018, the Appellant, through counsel, denied the trafficking allegations and provided explanations for the questionable SNAP transactions that were outlined in the February 1, 2018 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated March 29, 2018, informing the Appellant that Mission Mini Market 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 April 7, 2018, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated April 24, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system ... [Emphasis added].

7 CFR § 278.6(e)(1)(i) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

7 CFR § 278.6(b)(2) states, inter alia:

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1). [Emphasis added].

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such penalty. [Emphasis added].

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from June 2017 through November 2017. 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;

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes; 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 the reply to the Charge Letter and in the administrative review request postmarked April 7, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Mission Mini Market.
- Regarding the unusual number of transactions ending in a same cents value, Mission Mini Market has many of its items listed and/or calculated with an equal dollar amount including taxes so that when a customer purchases said items, it minimizes the amount of change and makes it easier to account for said items at the end of the accounting period. In other words, the items are priced to provide for an equal dollar amount at the checkout stand.
- With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, Mission Mini Market does not offer shopping carts but only shopping baskets. When large purchases are made regarding many items, it sometimes involves multiple baskets. When checking out at the checkout stand, at times, the clerk rings up these baskets separately in multiple transactions based upon the amount of baskets, family members shopping, etc. This at times was done in error, or because a customer with a basket full of items is behind another customer in line and the SNAP holder uses the card to pay separately. Moreover, customers at times shop multiple times on the same day at different times. In addition, Mission Mini Market is the only market around for some 4 miles. Many of the customers on SNAP live in motels and apartments near the market and do not have transportation to get to the larger markets in the area. Therefore, they rely on the subject store for their daily, weekly, and monthly food consumption.
- The excessively large purchase transactions are the result of SNAP customers relying upon Mission Mini Market to satisfy a large amount of their monthly food needs. The store carries staple foods and approximately 80 to 90 percent of the items are approved by SNAP for purchase. Many of Mission Mini Market's patrons do their monthly shopping in the store because of transportation issues, convenience, etc.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- 11 photos showing food items stocked at Mission Mini Market.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Mission Mini Market as a convenience store on September 11, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 28, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,100 square feet in size and it does not have a storage area/room or cooler/freezer located outside of public view;
- No shopping carts and three hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- Typical convenience store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- Several of the store's shelves are scantily filled with food items;
- Does not stock any specialty or ethnic foods;
- No meat/seafood specials or vegetable bundles that might sell for high prices;
- Not a WIC Program vendor; however, the store stocked one unit of infant food which is infant cereal;
- Per the store visit observations, there are only two expensive (costing \$5.00 or above) food items stocked at the store which are: Nescafe® coffee at \$6.99 per 200 grams and Coca-Cola® at \$5.99 per 12 pack;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods or foods by the case offered at a discounted rate to include grocery package deals;
- A limited checkout counter area and it has miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meats, poultry, or seafood;
- Meat items include a limited amount of canned fish, canned/potted meat, packaged lunch meat, hot dogs, meat jerky, and eggs;
- No kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold;
- No fresh produce;

- Only two varieties of canned fruits in minimal quantities;
- A minimal variety and amount of canned vegetables;
- Other staple foods available for purchase include such items as milk, margarine, bread, pasta, rice, cereal, flour, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, spices, tea, coffee, and vegetable oil; and
- A large variety of ineligible nonfood items including such items as health and beauty items, household items, household cleaning supplies, paper products, lottery tickets, tobacco products, cell phone accessories, hookah pipes, sunglasses, over-the-counter medications, party supplies, laundry detergent, clothing, movie DVDs, automotive supplies, pet food, charcoal, etc.

This documentation reflects that the firm is a minimally stocked convenience store in all relevant aspects. It is worth noting that the average SNAP purchase in a convenience store in San Bernardino County, California (the county in which Mission Mini Market is located) during the analysis period was \$6.75, reflecting that large purchases are not routinely made in such stores.

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.

Denial of Trafficking Charges

Regarding the Appellant’s contention that she denies the trafficking charges, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting

evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Same Cents Transactions

Charge Letter Attachment 1 lists 69 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant contends that with regard to the unusual number of transactions ending in a same cents value, Mission Mini Market has many of its items listed and/or calculated with an equal dollar amount including taxes so that when a customer purchases said items, it minimizes the amount of change and makes it easier to account for said items at the end of the accounting period. In other words, the items are priced to provide for an equal dollar amount at the checkout stand. However, the Appellant's contention is unsupported by available evidence.

At the time of the June 28, 2017 store visit, the contracted Reviewer noted that the prices of most of the food items stocked at Mission Mini Market did not end in any particular price variation. In addition, the store visit observations indicate that there are no signs in the store advising to its customers that Mission Mini Market rounds down purchases to the nearest even dollar (0 cents) or \$x.50 (50 cents) amount. Although many of the SNAP transactions made during the six month review period ended in \$x.00, there were numerous transactions that did not end in an even dollar amount. In addition, typical retail food stores operate on relatively low profit margins and it is unlikely that a store would be rounding down its prices. Likewise, it is unlikely that store clerks would have the authority to choose when to round down amounts or to charge based on the price labels. This method of pricing would be seemingly arbitrary to store customers and would likely lead to more conflicts within the store and not less. As such, it is clear that it is not Mission Mini Market's policy to round down purchases to an even dollar amount for most of its SNAP customers. It is also important to note that there really is no reason for a retail food store to round SNAP purchases to the nearest whole or half dollar or for SNAP customers to request that they purchase an "even" dollar amount of an item since EBT cards work similarly to a debit card so rounding to the nearest whole or half dollar would not make it easier for the customer or the store cashier as there is no "change" or cash involved in SNAP transactions.

Due to Mission Mini Market's mostly low cost foods, the larger dollar transactions cited in the Charge Letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionally result in a total purchase price ending in \$x.00 (0 cents). Instead, when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more dispersed statistical spread **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence

indicates that the irregular transaction purchases ending in 0 cents cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Repeat Transactions by the Same Household

Charge Letter Attachment 2 lists 22 transaction sets (56 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in San Bernardino County during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, the Appellant contends that Mission Mini Market does not offer shopping carts but only shopping baskets. When large purchases are made regarding many items, it sometimes involves multiple baskets. When checking out at the checkout stand, at times, the clerk rings up these baskets separately in multiple transactions based upon the amount of baskets, family members shopping, etc. This at times was done in error, or because a customer with a basket full of items is behind another customer in line and the SNAP holder uses the card to pay separately. Moreover, customers at times shop multiple times on the same day at different times. In addition, Mission Mini Market is the only market around for some 4 miles. Many of the customers on SNAP live in motels and apartments near the market and do not have transportation to get to the larger markets in the area. Therefore, they rely on the subject store for their daily, weekly, and monthly food consumption. However, the Appellant's contentions are unsubstantiated.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Mission Mini Market is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, only two varieties of canned fruits in minimum quantities, a minimal variety and amount of canned vegetables, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for convenience stores to have purchases such as those cited, especially when Mission Mini Market stocks only two high priced food items so the majority of food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Mission Mini Market are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food

items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspiciously high dollar amounts in short timeframes at Mission Mini Market, where the eligible food stock is limited, often on the same day, or within 24 hours of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 65 SNAP authorized retailers located within a 2.0 mile radius of Mission Mini Market that can meet the nutritional needs of SNAP customers including 4 super stores, 3 supermarkets, 1 large grocery store, 4 medium grocery stores, 2 small grocery stores, 11 combination grocery stores, and several convenience stores. Several of these authorized SNAP stores are larger than Mission Mini Market and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Mission Mini Market during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Mission Mini Market's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Mission Mini Market or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions

Charge Letter Attachment 3 lists 127 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that San Bernardino would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that the excessively large purchase transactions are the result of SNAP customers relying upon Mission Mini Market to satisfy a large amount of their monthly food needs. The store carries staple foods and approximately 80 to 90 percent of the items are approved by SNAP for purchase. Many of Mission Mini Market's patrons do their monthly shopping in the store because of transportation issues, convenience, etc. In support of this contention, the Appellant provided FNS with 11 photos showing food items stocked at Mission Mini Market. However, the Appellant's contention is not supported by available evidence.

As is indicated in the photos provided by the Appellant and the store visit report and photos of June 28, 2017, Mission Mini Market is stocked with a minimal quantity and variety of staple foods as it stocked no fresh meats, poultry, or seafood, no frozen meats, poultry or seafood, no frozen fruits or vegetables, no fresh produce, only two varieties of canned fruits in minimum quantities, a minimal variety and amount of canned vegetables, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only two expensive eligible

foods in stock that would account for these large amounts as well as showing the store has a limited checkout counter space, no optical scanner, and no shopping carts and only three hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 65 SNAP authorized retailers located within a 2.0 mile radius of Mission Mini Market that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than Mission Mini Market and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Mission Mini Market have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellant's location. While Mission Mini Market does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other area authorized stores.

FNS compared the SNAP transaction activity of Mission Mini Market during the review period to that of other convenience stores located in San Bernardino County, California. As indicated in the below bar graph, the comparison indicates that Mission Mini Market had a higher average transaction dollar amount in comparison to the county average for the same type store in San Bernardino County, California, during the review period. The store inventory did not indicate any food items that could only be purchased at this particular store. Rather, agency mapping reveals that there are competitive and superior stocked stores in the area where SNAP customers are also spending their SNAP benefits.

Average Transaction Dollar Amount: County Comparison

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The data below compares the SNAP transaction count within specified dollar ranges for Mission Mini Market and the average convenience store in San Bernardino County, California during the review period. Mission Mini Market exceeds the store type average in the high dollar range 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This comparison shows that the shopping patterns of Mission Mini Market are not typical and exhibit an excessive dollar volume for this store type. These large volumes of transactions of high dollar amounts are unlikely to indicate a pattern of legitimate food purchases. This transaction activity is unusual and is indicative of possible trafficking. The egregious ranges are highlighted in the graph below:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Mission Mini Market had a markedly higher average SNAP transaction dollar amount in comparison to the six closest authorized convenience stores located within a mile of the subject store. Mission Mini Market does not appear to carry any unique food items, any ethnic foods, or any specialty foods that would draw customers to spend substantially more than at these other six stores. The validity of these transactions is questionable and a good indicator of trafficking. Compared to the same six convenience stores, Mission Mini Market also had a considerably higher ALERT Rank average and number of suspect scan flag hits especially for Scans A (an unusual number of transactions ending in a same cents value), B2 (multiple purchase transactions made from individual benefit accounts in unusually short timeframes), and F (excessively large purchase transactions). This is another indicator of possible trafficking at the subject store.

The Appellant did not provide FNS with any vendor invoices for foods purchased for Mission Mini Market during the six month review period in order to help substantiate that enough staple foods had been purchased to cover/explain the SNAP transactions that occurred at Mission Mini Mart during the review period. Therefore, an invoice analysis could not be conducted by FNS. It is important to note that even if the Appellant had provided FNS with all of Mission Mini Market's vendor invoices for the six month review period and the vendor invoices showed that sufficient food inventory had been purchased to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as unusual numbers of transactions ending in a same cents value and rapid and consecutive transactions by individuals during the same store visit or in a single day. Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a limited variety of stock in the store, no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, no frozen fruits or vegetables, only two varieties of canned fruits in minimal quantities, a minimal variety and amount of canned vegetables, no fresh produce, a greater variety of foods at comparable or lower prices at other stores, no shopping carts and only three hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Mission Mini Market 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.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of seven SNAP households identified in the Charge Letter to analyze their shopping patterns at Mission Mini Market compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Mission Mini Market often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and/or hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 3 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

As previously indicated, the March 29, 2018 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated February 1, 2018 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 Mission Mini Market is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint,

naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

LORIE L. CONNEEN
Administrative Review Officer

July 10, 2018