

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

**MLK Last Stop,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0196989**

**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 that a permanent disqualification of MLK Last Stop (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 took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of SNAP, when it imposed a permanent disqualification against MLK Last Stop.

**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 July 2016 through December 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were multiple purchase transactions made too rapidly to be credible.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- The majority or all of an individual recipient's SNAP 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 MLK Last Stop for SNAP participation as a convenience store on March 24, 2015. In a letter dated February 23, 2017, 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 July 2016 and December 2016. 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 correspondence between March 6, 2017 and March 27, 2017 the Appellant, through counsel, responded to the charge letter, generally stating that no fraud had been committed by the firm. The Appellant stated that while some transactions might appear to be unusual, the firm did not engage in trafficking. The Appellant argued that FNS would recognize that the questionable transactions were legitimate once it understood the nature of the Appellant's business and the demographics of the area in which the store is located.

In support of its response, the Appellant submitted a large amount of evidence consisting of several hundred pages of documentation, most of which were inventory invoices and receipts for the six-month review period. Other evidence included, but was not limited to, photographs of the store and its inventory; an affidavit from a store manager; maps of the area, a list of nearby SNAP-authorized stores; copies of the firm's Z2 reports listing the store's total monthly sales for the following categories: beer, liquor, soda, grocery, snacks, nonfood, cigarettes, and wine; a list of 10 items available in bulk (e.g. chicken wings, hot dogs, chips, drinks, and meat); and Illinois state sales tax returns for the six-month review period.

After considering the Appellant's reply to the charges as well as the documentation provided, the Retailer Operations Division determined that the Appellant's explanations and evidence were not sufficient to justify the unusual transaction patterns listed in the charge letter. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated April 27, 2017. This determination letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but 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 May 8, 2017, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

### STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

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

*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(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, [or] evidence***

***obtained through a transaction report under an electronic benefit transfer system....***  
[Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *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 § 271.2 states, *inter alia*:

*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, *inter alia*:

*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(b)(2)(ii) states, *inter alia*:

*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, *inter alia*:

*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... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:*

*Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and*

*Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and*

*Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 278.6(i)(2); and*

*Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations...*

### **APPELLANT'S CONTENTIONS**

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

- Eighty-five percent of the firm's sales are groceries, and 78 percent of those groceries are purchased with EBT.
- All of the allegations of trafficking can be explained by understanding the role MLK Last Stop has in a relatively isolated subsection of the community. Prior evidence has been presented to articulate this point. The nature, location, and clientele of the store can all account for the alleged violations. The store is in a dilapidated, residential area, which consists of residents living off of SNAP benefits. Most of those residents are without transportation and access to alternative grocery options.
- A majority of the store's square footage is used for storing inventory.
- All employees are familiar with the store in order to help customers shop promptly.
- All employees are held to a set of internal procedures and policies that have been in place since the store opened, but were only recently memorialized in writing (after receipt of the charge letter). Every employee must now read, review, and understand these measures prior to beginning their employment. Before the policies became written, all employees received the policies verbally. Any violation of the policies is grounds for

termination. The store's policies are now on display behind the counter for employees to view while working.

- The charges against the store were determined using numerical evidence and data analysis. Measuring the frequency between purchases in a small neighborhood store with a single cash register does not, by itself, indicate trafficking. The data can be refuted by reviewing the typical shopping habits of the store's customers.
- The staff at MLK Last Stop is able to quickly ring out customers. The fact that multiple shoppers paid using EBT is indicative of the demographics and not of illegal conduct.
- Regarding multiple transactions in a short timeframe from a single household, a majority of the firm's customers walk to and from the store. Living in close proximity allows for customers to make multiple purchases on the same day. It is natural that customers will purchase items, walk them home or place them in the car, and then return later for additional groceries.
- The store manager was solely responsible for operating or overseeing the running of the cash register. If someone else besides the manager operated the register, either the manager or the owner would review the security footage to ensure that no illegal activity occurred. The manager was familiar with all SNAP requirements and followed all SNAP rules. He also ensured that all employees were trained to properly follow SNAP rules. The store manager stated that customers would approach him to engage in trafficking, but he immediately removed them from the property. Any attempts to engage in illegal activities were taken very seriously by the staff at MLK Last Stop.
- Employees were also trained on the proper use of the cash register, including entering appropriate codes for taxable and non-taxable purchases. Every employee is required to adhere to all state and federal laws when operating the register and ringing out SNAP-eligible items. Adhering to these requirements is an ethical requirement that MLK Last Stop takes seriously. The firm would not jeopardize losing the majority of its business over a SNAP disqualification.

In support of its contentions, the Appellant provided the following documentation:

- Two-page document entitled, "MLK Convenience Store Inc Policy." The document addresses store hours; forms of payment accepted; returns and exchanges; general sales; cash register operation; tobacco sales; liquor and alcohol sales; lottery ticket sales; and loitering and soliciting. The policy also addresses EBT transactions, stating that EBT cards will only be accepted for food and beverages, and will not be used in exchange for cash, alcoholic beverages or any non-food items. Employees accepting EBT for such ineligible items will be immediately fired and reported to government officials. The policy further states that every item sold must be entered into the cash register in the proper category. Nonfoods and ineligible items must not be entered into the EBT/Food category.
- A photo showing the above policy posted in the store
- An affidavit from the Appellant owner, stating that one clerk manages the cash register 90 percent of the time. This person has been a trustworthy and effective employee and is responsible for training all employees that work the register. The affidavit further states that the store is up to date on SNAP requirements and abides by all SNAP guidelines. The affidavit then repeats many of the same arguments presented in response to the

charge letter. The affidavit also states that the firm's policies have been in existence since the store was opened, but were formally written in a document after receipt of the charge letter.

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 presented, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on questionable 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 questionable transactions cited in the charge letter were the result of trafficking?

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a January 13, 2017 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:

- MLK Last Stop is a small convenience store, roughly 1,600 square feet in size, operating in an urban, residential area of Decatur, Illinois.
- At the time of the visit, the firm had no shopping carts or shopping baskets for customer use. A photo from a May 2016 store visit did show one shopping cart, but it was located in a corner of the store and filled with empty boxes and did not appear to be used by customers. Additionally, there is a small staircase that one must navigate to enter and exit the store, so it is very unlikely that the shopping cart was used by customers to transport items from the store to the adjacent parking lot.
- The store visit report indicates two cash registers, but personnel at the store stated that only one cash register was in operation. In its response to the charge letter, the Appellant also indicated that the firm used only one cash register during the review period. Agency records indicate the use of one EBT point-of-sale device.
- It appears that the store may use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, and condiments. The store also sells a large amount of nonfood items, including tobacco products, alcoholic beverages, lottery tickets, and miscellaneous household merchandise.

- The available food at the store is primarily of a low-dollar value. There is no indication that the firm sells food items in bulk amounts. There is no signage or large boxes of food indicating that bulk sales are available.
- The checkout area consists of a small, narrow countertop where items can be placed to be rung up. The cashier is located behind a sliding Plexiglas window. The sliding window allows the cashier to give customers bottles of alcoholic beverages located behind the counter. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space to place more than a few small items and there is no conveyor belt to expedite the purchase.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a convenience store. There was no indication at all that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items, especially considering minimal amount of staple foods, the lack of shopping carts and baskets, and the constricted checkout area. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

### SNAP Transaction Analysis

**Charge Letter Attachment 1: Multiple purchase transactions were made too rapidly to be credible.** This attachment lists 50 sets of transactions (100 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Considering the fact that this store has only a moderate amount of staple food, just one cash register, one EBT point-of-sale device, no shopping carts or baskets, and a cramped checkout counter, and considering the large number of low-priced items that it would typically take to add up to the dollar amounts found in this attachment, it is extremely unlikely that legitimate transactions could have occurred in such short periods of time.

5 U.S.C. § 552 (b)(7)(E)

It is important to reiterate that the Appellant store has limited counter space and does not have any conveyor belts to expedite large transactions. There are also no shopping carts or shopping baskets to help carry large amounts of food. In short, it does not seem to be logistically possible for the households in Attachment 1 and the store's staff to conduct the following action steps:

- Transport a large number of food items by hand to the checkout area;
- Place each item on the limited counter space for processing;
- Separate food items from non-food items;
- Bag the merchandise and move it off the counter space area; and
- Process the sale on the EBT point-of-sale terminal mere moments after the completion of a separate transaction.



Unfortunately, the Appellant has offered no evidence to prove how such transactions could have possibly taken place. Such evidence might have included itemized cash register receipts to prove was actually purchased during each transaction. Anecdotal explanations without supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate purchases of eligible food. As such, it is reasonable to conclude that the transactions in this attachment were very likely due to trafficking.

**Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames.** This attachment lists 65 sets of transactions (169 transactions in all) totaling 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E) The Appellant, through counsel, has argued that because the store's immediate neighbors are residences, customers routinely make a second purchase after an initial transaction, either while already in the store, or a short time later after taking their initial purchase home. Such transactions are common, the Appellant contends, because of the demographics of the area in which the store is located. Such demographics include households with limited transportation or ability to get to a larger grocery store.

Unfortunately, this argument is not supported by the evidence in the case. FNS records show that customers who shopped at MLK Last Stop regularly shopped at nearby superstores or supermarket, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of shopping at MLK Last Stop. This suggests that transportation is not the concern that the Appellant believes it to be. Such evidence also undermines the argument that frequent, repetitive trips are necessary.

5 U.S.C. § 552 (b)(7)(E)

There are many other similar examples in the agency record.

Considering the limited stock in the Appellant store and the availability of larger stores with greater inventory in the vicinity, it makes little sense that households would spend so much of their allotment in such a repetitive manner at the Appellant store. That a household would legitimately make repetitive visits to a moderately stocked convenience store 5 U.S.C. § 552 (b)(7)(E).

Given the common practice of violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions to avoid detection, a firm's explanation for why these repetitive SNAP transactions are occurring in a small convenience store should be both rational and compelling. The Appellant's contentions in this regard are neither.

**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 107 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 households would regularly spend almost the entirety of their SNAP allotment in a single transaction or in a series of rapid transactions at this store.

Moreover, a government report on SNAP shopping patterns indicates that on average, after the first day of benefit issuance, approximately 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes about two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent.<sup>1</sup> Depleting a large portion of one's SNAP balance in a very short period of time, leaving little or no benefits for the rest of the month, is inconsistent with normal shopping behavior of SNAP households.

The Appellant, through counsel, has argued that 78 percent of the food sold by MLK Last Stop is purchased by SNAP recipients. This argument implies that SNAP customers use MLK Last Stop as their primary grocer. However, as indicated earlier, this is clearly not the case. FNS records show that SNAP customers who shopped at MLK Last Stop routinely shopped at other larger stores in the area.

In its response to the charge letter, the Appellant also claimed that SNAP customers often do not know how much they have left on their account until they make a purchase and ask. It is normal, the Appellant contends, for a customer, upon learning that they have more money available in their SNAP account, to purchase more grocery items.

While this may be true to some extent, it does little to explain why the households would choose to spend almost all of their benefits at a convenience store with limited inventory and undoubtedly higher prices rather than at a nearby supermarket. It should also be noted that SNAP customers do not need to make a purchase to find out their remaining balance. Such information is readily available by calling the EBT phone number listed on the card.

Without credible evidence to demonstrate what was actually purchased in the transactions listed in Attachment 3, this review has little option but to conclude that the transactions were, more likely than not, the result of trafficking.

**Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 746 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in the state of Illinois. The Retailer Operations Division has determined that during the review period, the average SNAP purchase amount for a convenience store in Illinois was \$6.42. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Given that the Appellant firm does have a moderate inventory of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an occasional purchase where the transaction amount is high, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially

---

<sup>1</sup> See U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program*, by Laura Castner and Juliette Henke. Project officer: Anita Singh, Alexandria, VA: February 2011.

considering the absence of shopping carts and shopping baskets. The substantial number of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Based on the characteristics of the store it is simply not credible that the Appellant would so frequently conduct transactions that more closely resemble those of a supermarket or superstore. In reviewing the contractor's store visit photos and report, it is difficult to comprehend what, other than trafficking, would lure a household to spend large amounts of SNAP benefits in a convenience store with minimal amounts of food and with no shopping carts or shopping baskets rather than going to a nearby supermarket where prices are likely lower, where inventory is significantly larger, and where shopping carts or baskets would help facilitate the purchase of large numbers of items.

The Appellant, through counsel, has argued that large transactions are the result of customers shopping for family gatherings and parties. It also contends that the large transactions are evidence of customers buying items in bulk, such as cases of chicken wings, soda, flavored water or chips.

Unfortunately, such contentions are anecdotal only. The Appellant has submitted no evidence, such as itemized cash register receipts, to prove that bulk items were ever purchased. As noted earlier, the contractor's store visit report gave no indication that such bulk items were even available in the store. The Appellant's photographs, taken after receipt of the charge letter, are not sufficient evidence of this claim.

The Appellant has also submitted a large number of inventory receipts, apparently in an effort to show that the store was capable of conducting large transactions.

Unfortunately, none of this evidence convinces this review that the large transactions listed in Attachment 4 are legitimate purchases of eligible food. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

But clearly not all purchases were made with EBT cards. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Such a markup is significantly higher than most convenience stores (40 to 60 percent) and is not realistic if a store expects to survive in an economically disadvantaged neighborhood.

The Appellant's evidence, rather than supporting its contentions, only serves to undermine them and strengthens the trafficking case against the store. The Appellant also failed to provide critical evidence, such as itemized cash register receipts, to prove that the transactions listed in each of the charge letter attachments were legitimate purchases of eligible food.

Stores caught in trafficking violations, both during onsite investigations and in EBT analysis cases, consistently display particular characteristics or patterns. These patterns often include frequent, large transactions that cannot be supported by the retailer's inventory, store type, and structure. It is the conclusion of this review that MLK Last Stop, with its limited and primarily low-dollar inventory, lack of shopping carts and baskets, and its constricted checkout area cannot support the large numbers of high-dollar transactions identified in Attachment 4. Therefore, the most logical explanation for such repetitive transactions is trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has more than satisfactorily demonstrated that MLK Last Stop likely trafficked in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut such a claim. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

### **Affidavits**

As noted earlier, the Appellant submitted affidavits by both the store owner and a store manager who allegedly operated the cash register 90 percent of the time.

With regard to these affidavits this review has little confidence in the accuracy and truthfulness of these statements. It is rare that a retailer or an employee admits to trafficking, as making such an admission potentially exposes an individual to administrative and/or criminal charges. On the contrary, experience has shown that owner and employee affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence suggesting otherwise.

In this case, the evidence weighs heavily in favor of the Retailer Operations Division. As such, it is the determination of this review that the Affidavits submitted by the Appellant do not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Trafficking Case based on EBT Data**

The Appellant, through counsel, has argued that the charges against the store were determined using numerical evidence and data analysis. The Appellant contends that measuring the frequency between purchases in a small neighborhood store with a single cash register does not, by itself, indicate trafficking.

With regard to this contention, this review acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data or transaction data under an EBT system. 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. The 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, 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, [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 an 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.

It should be noted that this reviewer has thoroughly examined the documentation and information provided by the Retailer Operations Division and found no evidence to suggest that the agency simply churned out 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 undertook a thorough investigation before concluding that trafficking was likely occurring.

It is worthwhile to state here that SNAP regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how many times or how frequently a household may use its EBT card at a particular store or how large a transaction can be. However, the transactions noted in the charge letter attachments are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store’s documented physical characteristics and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores. This review does not contend that repetitive or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm’s intent to comply with program regulations is called into question.

### **Civil Money Penalty**

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. Based on a review of the case record, there is no evidence that the Appellant requested a CMP in lieu of disqualification when it responded to the charge letter. The Appellant also made no mention of a trafficking CMP nor submitted any documentation to support its eligibility of a CMP in any portion of its request for administrative review. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

## **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify MLK Last Stop from SNAP participation. This data provided ample evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanation for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter point to trafficking as the most likely explanation. Therefore, based on a thorough review of all of the evidence in this case, it is more likely true than not true that trafficking violations did occur as determined by the Retailer Operations Division. As such, the decision to impose a permanent disqualification against the Appellant, MLK Last Stop, under the ownership of Hana Husni Asad, 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

November 30, 2017