

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

**MLK Mini Market,**

**Appellant,**

**v.**

**Case Number: C0196604**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against the MLK Mini Market (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on September 25, 2017.

**AUTHORITY**

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “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 August 18, 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 during the months of June 2016 through November 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil

money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, responded to the charges in a letter dated August 28, 2017, that admitted to the business offering credit accounts and requested a CMP in lieu of disqualification, but provided no evidence in support of the CMP. The Retailer Operations Division, by letter dated August 31, 2016, requested evidence of the existence of credit accounts at the business. Appellant, through counsel, responded to their request in a letter dated September 11, 2017, stating that the owners are unable to provide the requested documentation of credit accounts. The Retailer Operations Division notified Appellant in a letter dated September 25, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated September 30, 2017, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence dated October 30, 2017, was received from counsel.

## **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

## **CONTROLLING LAW**

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

7 U. S. Code § 2021(a)(2) states, "Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern 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."

In addition, 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, evidence obtained through a transaction report under an electronic benefit transfer system . . . .”

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2. ” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . . .” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

7 CFR § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

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.”

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).” Part 278.6(b)(2)(ii) further states that 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 Part 278.6(b)(1), the firm shall not be eligible for such a penalty.

## **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of June 2016 through November 2016. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. There were an unusual number of transactions ending in a same cents value.
2. Multiple transactions were made from individual benefit accounts in unusually short time frames.
3. Excessively large purchase transactions were made from recipient accounts.

## **APPELLANT'S CONTENTIONS**

In the response to the letter of charges, in the response regarding documentation of credit accounts, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The store owners maintain that the transactions were legitimate SNAP purchases and were the result of granting customers credit who then settle their accounts when SNAP funds are reauthorized. It is admitted that this practice violates SNAP regulations. The store owners were unaware of the prohibition when the transactions took place, but have now been counseled appropriately;
- There is no evidence that nonqualified items were accepted or that cash was exchanged;
- The store owners admit to granting credit to customers, but were not afforded ample time in which to prepare a detailed response regarding the violation. An extension of time is requested to permit detailed documentation regarding the credit transactions and that the penalty be reduced pursuant to SNAP regulation 278.2(f);
- A CMP in lieu of disqualification is requested. The store is in a low income area where many of its residents are dependent on SNAP benefits. There is no alternative shopping close by and many residents rely on the store since it is within walking distance; and,
- The store now has strict compliance practices in force and all employees have been trained regarding the eligibility requirements for SNAP transactions.

Appellant submitted no evidence or other rationales in support of these contentions.

The preceding may represent a summary of Appellant's contentions in this matter, however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## **ANALYSIS AND FINDINGS**

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant business during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

## Store Background and FNS Store Visit

The FNS initially authorized the Appellant business on September 17, 2014, and the business is classified as a small grocery store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 13, 2014, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a small grocery store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The business stocked typical mainstream American brand products and did not offer any ethnic foods.
- Exterior signage advertised: groceries, lottery, ATM, cold beer & wine, hot coffee, prepaid phones.
- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout area consisted of three openings set inside of a plastic security barrier. Two of the openings contained a revolving window while the third opening had a small pass through opening at the bottom. All three areas had a narrow shelf approximately one foot deep in front of them with displays taking up counter space. The narrow width of the checkout counter would make it problematic to process large orders.
- The checkout area had two cash registers, no optical scanner, and one point-of-sale (POS) terminal as evidenced by the store visit report and photographs.
- No food packages, bundles, case sales, bulk products, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale.
- The store had a very limited stock of staple foods that consisted of many single serving and pre-packaged items with the majority of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, packaged lunch meats, hot dogs, bacon, and jerky), no deli meats or deli cheeses, a very limited quantity and variety of frozen entrees, no frozen dinners, a very limited quantity and variety of fresh fruits and vegetables (six onions, one potato, two limes, two oranges, four apples, one container of cubed watermelon, and two green peppers one of which was starting to spoil), no frozen fruits or vegetables, minimal single serving nuts, a limited quantity and variety of canned and packaged staple food items, no cocoa, no butter, no sour cream, no yogurt, no rolls, no tortillas, no tostadas, no tea, and no expensive eligible food items.
- Ineligible items included: tobacco, alcohol, lottery, household products, paper products, pet products, automotive products, health and beauty items, diapers, incense, clothing,

and candles while accessory foods included: candy, condiments, coffee, cocoa, and carbonated/ uncarbonated drinks.

- The store was not a WIC vendor.
- Signage in the store was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Many food items were not priced. Of those items with prices, most had prices ending in .x9 cents except for a very limited number of items such as snacks at two for \$1.00 and Ramen soups at three for \$1.00. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The business's hours of operation were open 7:00 AM-9:00 PM daily as confirmed by a store employee during the store visit.
- The FNS store visit report and photographs showed many empty or marginally stocked shelves, racks, and coolers as well as dusty food items all indicative of a slow turnover of stock.
- The quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit on September 13, 2014.

### **Unusual numbers of transactions ending in a same cents value**

This attachment lists 294 transactions ending in a same cents value **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **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 FNS store report and photographs revealed no signs posted to indicate special food packages, bundles, case sales, or other sales that would explain the unusual number of transactions ending in these same cents values and no bulk items were available for purchase. The high percentage of same cent transactions combined with the large number of high dollar transactions is irregular and suspicious for this type store.

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment. Unsubstantiated claims of offering credit provide no basis to explain the unusual numbers of transactions ending in a same cents value **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The inventory report and photographs from the September 27, 2016, FNS store visit show the business offered a very limited quantity and variety of SNAP eligible food items with the majority of its inventory in snacks, accessory foods and ineligible items. Also, no food packages, bulk products, bundles, case sales, or other sales/promotions of eligible items were evident during the store visit that would explain these unusual same cents transactions. Additionally, the business carried no expensive eligible food items making it questionable that such a large number of high dollar value SNAP transactions could be for legitimate food purchases. Many food items at the Appellant business were not priced while those items that were priced mostly had prices ending in .x9 cents except for a very limited number of items such as snacks at two for \$1.00 and Ramen soups at three for \$1.00. A price ending in .x9 cents is the most common pricing structure for stores of this type. The purchase of several items with prices ending in .x9 cents would most likely not result in a total ending in a same dollar amount

5 U.S.C. § 552 (b)(6) & (b)(7)(C). When there are a disproportional amount of transactions ending in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking.

While some of the transactions in this Attachment may have been for legitimate staple food purchases, particularly those in the lower dollar amounts, there is insufficient evidence that these repeating same cent transactions are legitimate. When many transactions end in a same cents amount, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence to the contrary, are suggestive of trafficking. As such, the transactions in this Attachment have not been adequately documented as legitimate and therefore do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

### **Multiple transactions in unusually short time frames**

This Attachment documents 51 individual transactions in 21 sets of two or more transactions conducted by 11 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). One transaction set is comprised of four individual transactions, seven sets are comprised of three individual transactions, and the remaining 13 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends the multiple transactions are the result of the store owners granting customers credit who then settle their accounts when SNAP funds are reauthorized, but was unable to provide any documentation supporting this claim.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a small grocery store's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household making a payment toward their credit account followed or preceded by a purchase or a household purchasing a forgotten item right after checking-out as 16 of the 21 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in 16 of the 21 sets. It is also unusual based on the available food stock that all of the transaction sets in this Attachment

5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average small grocery store SNAP transaction amount in the District of Columbia during the period under review was \$7.60,

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This quantity of same cents transactions exceeds the probability of occurring with legitimate food purchases and indicates that these amounts were contrived by store employees trying to avoid suspiciously high

transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts.

The Appellant business processed several transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, markedly faster than supermarkets typically process purchases, yet the Appellant business has only a small, crowded checkout counter, no optical scanner, and none of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given that the Appellant business has very limited checkout counter space and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

An analysis of the shopping patterns for 11 households listed in this Attachment shows that all 11 households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a considerable distance from Appellant's location. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is also unlikely that store ownership would extend credit to customers who do not regularly shop at the business.

FNS records further show there is a medium grocery store located 0.29 miles from the Appellant business as well as one supermarket and two super stores located 1.12, 1.18, and 1.79 miles away that would offer greater quantities and varieties of food items at lower prices than would be found at a poorly stocked small grocery store. The Appellant business is also located on a street that has fixed route bus service that would facilitate shopping at other stores. Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any viable explanations for the irregular shopping patterns exhibited by the households in this Attachment as contentions of credit are unsubstantiated. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at larger stores offering a greater variety and quantity of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a small grocery store that offers a very limited selection of staple food items and has no shopping carts or hand baskets that would be needed for the large transactions in this Attachment. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business.

There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar



value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

### **High Dollar Value Transactions**

This Attachment lists 119 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is atypical for a poorly stocked small grocery store of this size and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$7.60 for this store type in the District of Columbia. The 119 excessively large SNAP EBT transactions at Appellant's business for the review months **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This is unusual and indicative of trafficking.

The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater variety and quantity of SNAP eligible foods items for better prices than customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at larger food stores.

Evidence shows that the difference in the average SNAP transaction dollar amount and the total SNAP transaction dollar volume for the District of Columbia small grocery stores during the review months and at the Appellant business is significant. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**e. A comparison of Appellant's SNAP redemptions to that of nearby small grocery stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

This store also had irregular SNAP transaction data as compared to like type small grocery stores in the District of Columbia. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These unusual spikes in both transaction numbers and dollar volume do not appear in the transaction count and dollar volume averages for other District of Columbia small grocery stores. These high dollar transactions are considered to be irregular and suspicious based on the Appellant store's food inventory. The Retailer Operations Division determined there was no credible reason for the Appellant business to have transactions at those high dollar levels given the limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore

also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant again contends the multiple transactions are the result of the store owners granting customers credit who then settle their accounts when SNAP funds are reauthorized, but was unable to provide any documentation supporting this claim.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit on September 27, 2016, shows that the Appellant business offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Since the Appellant business carries no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, packaged lunch meats, hot dogs, bacon, and jerky), no deli meats or deli cheeses, a very limited quantity and variety of frozen entrees, no frozen dinners, a very limited quantity and variety of fresh fruits and vegetables (six onions, one potato, two limes, two oranges, four apples, one container of cubed watermelon, and two green peppers one of which was starting to spoil), no frozen fruits or vegetables, minimal single serving nuts, a limited quantity and variety of canned and packaged staple food items, no cocoa, no butter, no sour cream, no yogurt, no rolls, no tortillas, no tostadas, no tea, and offers no expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, alcohol, lottery, household products, paper products, pet products, automotive products, health and beauty items, diapers, incense, clothing, and candles are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice.

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a small grocery store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review

months. Additionally, the Appellant business has an extremely small checkout area and does not have shopping carts, hand baskets, or a scanner thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived. Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

It was further noted that SNAP redemptions at the Appellant business dropped following receipt of the charge letter August 21, 2017. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced fluctuation in SNAP transactions immediately following the FNS store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

### **Credit and Other Contentions**

Appellant contends the business allows credit accounts, a violation of SNAP regulations at Section 278.2(f), because the owners were not aware of this prohibition when the transactions took place. Appellant further maintains that the transactions were legitimate SNAP purchases, that there is no evidence that nonqualified items were accepted or that cash was exchanged, and that the business now has strict compliance practices in force and all employees have been trained regarding the eligibility requirements for SNAP transactions.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the business now has strict compliance practices in force and all employees have been trained are positive steps, they do not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When the store owners signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically

includes violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that store ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the business allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the SNAP retailer training video, provided to all retailers upon initial authorization and upon reauthorization, both cite credit accounts as violating SNAP regulations making it difficult to believe that store ownership was not aware that offering credit violated SNAP regulations.

Ownership's admission that the business extended credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4); this Section includes a like disqualification period for the sale of ineligible items by management personnel. It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the letter of charges. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In regards to Appellant's admission to accepting SNAP benefits for payment on credit accounts, a program violation, counsel for Appellant initially stated the owners were unable to provide the requested documentation, but in the request for administrative review, stated that the owners were not afforded ample time to prepare a detailed response regarding the violation and requested additional time. Despite allowing an additional three weeks to submit supplementary information, Appellant failed to provide any documentation for the existence of credit accounts at the business or provide any other explanations for the transactions listed in the charge letter. Since no evidence was submitted supporting the claim of credit accounts, the Retailer Operations Division evaluated the suspicious SNAP transactions listed in the letter of charges to determine if they indicated trafficking. Their determination was that the transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in

complicity or collusion with others, or acting alone . . . .” SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that “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 . . . .” In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on September 27, 2016, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

## **CIVIL MONEY PENALTY**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because 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 within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

## **CONCLUSION**

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (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.

ROBERT T. DEEGAN  
Administrative Review Officer

January 23, 2018