

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

MN Tasnia Inc./MDI Convenience Store,

Appellant,

v.

**Case Number: C0195366**

Retailer Operations Division,

Respondent.

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division (“ROD”) to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against MN Tasnia Inc./MDI Convenience Store (“Appellant”).

**ISSUE**

The issue accepted for review is whether the ROD 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 January 4, 2017.

**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 November 28, 2016, the ROD charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of SNAP transaction patterns that “establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for your type of firm.” This letter of charges states, in relevant part, “As provided by Section 278.6(e)(1)

of the SNAP regulations, the sanction for trafficking is permanent disqualification.” The letter also states that “. . . under certain conditions, FNS may impose a civil money penalty (CMP) . . . in lieu of a permanent disqualification of a firm for trafficking.”

Appellant, through counsel, replied to the ROD’s charges in writing. The record reflects that the ROD received and considered this information prior to making a determination. The ROD determined that Appellant’s contentions did not outweigh the evidence that the store was trafficking. Based on the preponderance of evidence, the ROD concluded that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The ROD issued a determination letter dated January 4, 2017. This letter informed Appellant that it 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. The letter also states the ROD considered Appellant’s eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The ROD determined that Appellant was not eligible for the CMP because Appellant had not submitted sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

On January 16, 2017, Appellant, through counsel, appealed the ROD’s determination and requested an administrative review of this action. The appeal was granted.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. That means 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 argument asserted is more likely to be true than not true.

### **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 § 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 in the event that personnel of the firm engaged in trafficking of SNAP benefits.

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** . . . . (Emphasis added.)*

7 CFR § 278.6(a) states, in part:

*Any firm considered for disqualification ... under paragraph (a) of this section... shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification . . . . The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter . . . .*

7 CFR § 278.6(c) reads, in part:

*The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.*

7 CFR § 278.6(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 7 CFR § 271.2, in part, as:

*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 . . . .”*

Also at 7 CFR § 271.2, eligible food is defined as:

*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)(2)(ii) states, in part:

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

7 CFR § 278.6(b)(2)(iii) states:

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

### **SUMMARY OF CHARGES**

The charges under review were based on an analysis of SNAP Electronic Benefit Transfer (EBT) transaction data during the period from March 2016 through August 2016. This analysis identified the following patterns of SNAP transaction activity indicative of trafficking:

- Multiple transactions made from the same accounts in unusually short time frames; and,
- Excessively large transactions.

The attachments furnished with the charge letter specify the questionable and unusual SNAP transactions indicative of trafficking which were conducted at Appellant during the review period.

### **APPELLANT'S CONTENTIONS**

Appellant's contentions regarding this matter are essentially as follows:

- Appellant denies the allegations;
- There is no direct evidence of trafficking;
- Appellant has not previously been charged with SNAP violations;
- Appellant did not receive a warning;
- The determination letter is flawed as it does not analyze or discuss the legal conclusions stated in the letter;
- FNS failed to conduct an analysis of the information contained in the charge letter;
- Multiple transactions are because customers occasionally make consecutive transactions;
- Multiple transactions may be because a purchaser forgot an item, or decided to make an additional purchase after depositing the initial purchase in a car or with another person;

- Transactions that are hours or days apart do not constitute unusually short time frames;
- The large transactions are only a small portion of Appellant’s transaction activity during the six-month review period;
- There is nothing in SNAP regulations that prohibit multiple transactions;
- The store is 3000 square feet, with 1500 square feet of storage space;
- The store has a wide variety of staple food items. Appellant provided a five-page handwritten price list;
- Large purchases may be because families are buying in volume, or because they are buying cases of Red Bull or Monster drinks on sale;
- Appellant is denied due process by FNS waiting almost nine months after the first alleged trafficking violation to charge the store. This delay prevented Appellant from being able to investigate itself and fine evidence in support of its transaction activity;
- The investigative report is inadequate as it is not signed under the penalty of perjury;
- Appellant will suffer irreparable harm if disqualified from the SNAP program;
- There is no evidence that Appellant intended to violate the regulations; and,
- Appellant requests a CMP. Appellant described its eligibility for a CMP and submitted an affidavit signed by the owner.

The preceding may represent only a brief summary of Appellant’s contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any not specifically recapitulated.

### **ANALYSIS AND FINDINGS**

Regarding Appellant’s denial of violations, this review examines the relevant information regarding the determination. Once the ROD establishes trafficking occurred, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that that it did not engage in trafficking. If this is not demonstrated, the case will be sustained. Assertions that the firm has not violated program rules, without supporting evidence and rationale, do not constitute valid grounds for overturning the determination.

#### **Store Characteristics**

The case file supports that in reaching a disqualification determination, the ROD considered information obtained during an August 25, 2016 store visit conducted by a USDA contractor to observe Appellant’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 documented the following store size, description, and characteristics:

- The contractor estimated the store to be about 800 square feet with no food stored outside of public view.<sup>1</sup> It is in an urban, residential area;
- The available inventory of SNAP-eligible food items showed stock typical of a convenience store, including being composed predominantly of inexpensive items;
- There was only one cash register and one electronic SNAP terminal device;
- There were no shopping carts or hand baskets;
- There were also no scanners or conveyor belts;
- There was no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers; and,
- There were no meat or seafood specials or bundles.

In addition, the store's checkout counter space area was cluttered and small affording very little surface area on which to place items for large purchases and precluding the processing of more than one customer at a time.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. Appellant asserted the store has a wide variety of staple food items, and customers may purchase cases of drinks in bulk. The available food was primarily of a low-dollar value and there was no hint that the firm sold items in bulk. This is supported by the price list provided by Appellant. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

### **Repeat Transactions by the Same Household**

Attachment 1 to the charge letter documents the same household making back-to-back transactions in unusually short time frames. **7 USC 2018 (b)(7)(e).**

The record reflects that customers conducting rapid, repetitive and large transactions at Appellant frequently spent SNAP benefits at better-stocked and more competitively-priced grocery stores, sometimes on or about the same day they shopped at Appellant.

The following examples from the ROD's Case Analysis Document show households shopped at better stocked firms on or about the same day as conducting large transactions at Appellant:

SM/SS	Supermarket/Superstore
SG/MG/LG	Small/Medium/Large - Grocery
BB	Bakery
CO	Combination Store
CS	Convenience Store
ME/SE	Meat/Seafood Specialty

<sup>1</sup> Appellant asserts that the store is 3000 square feet, with 1500 square feet of storage space. The store visit documentation does not support this assertion. Prior store visits also support the store is ~800 square feet.

### **SNAP Household #1**

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

### **SNAP Household #2**

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

### **SNAP Household #3**

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

The Case Analysis Document identifies much larger stores with more reasonable prices located within one mile of Appellant, including two supermarkets located .13 and .29 miles away, respectively. There is no basis for unusually high customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered. Oddly, some SNAP households spent considerably less at the larger stores than at Appellant.

Appellant contends multiple transactions may be because a purchaser forgot an item, or decided to make an additional purchase after depositing the initial purchase in a car or with another person. It is unclear why someone would intentionally shop for only a portion of needed groceries, deposit them in a car or with another person, and then continue shopping. Appellant is correct that customers sometimes forget an item or see something at the checkout and decide to purchase it after already having completed a transaction. In such instances, it is reasonable to expect the subsequent purchase to be for a nominal amount. This is because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. Also, forgotten goods purchased immediately after a prior transaction typically consist of only one or two items. However, the subsequent transactions were for amounts that exceed any minor expense. In some cases, the amounts of subsequent transactions equaled or exceeded the preceding transaction total.

Appellant maintains multiple transactions are because customers occasionally make consecutive transactions. Appellant also argues transactions that are hours or days apart do not constitute unusually short time frames. 7 USC 2018 (b)(7)(e). While there are legitimate reasons why a SNAP recipient might return to a convenience store in a short period of time, the examples in Attachment 1 indicate a series of purchases that total to large amounts. SNAP benefits are intended to supplement the food budget for households whose net income is near or below the Federal Poverty Level. It is difficult to believe customers who must rely on SNAP benefits to make ends meet prefer to pay higher prices and spend considerable amounts of their benefits at a convenience store.

Spending sizable portions of one's SNAP benefit allotment in a convenience store when there are larger stores at which one also shops, which carry more variety of foods at a lower cost, is unreasonable customer behavior. Moreover, households listed in this attachment conducted

this strange shopping pattern of making substantial purchases at Appellant multiple times during the review period. 7 USC 2018 (b)(7)(e). Appellant's explanation in this regard is neither.

### **Large Transactions**

Appellant contends large purchases may be because families are buying in volume, and its large transactions are only a small portion of Appellant's transaction activity during the six-month review period. The food stock and facilities of Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at such stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. It is rare for a convenience store such as Appellant's to have purchases like those included in Attachment 2 to the charge letter. 7 USC 2018 (b)(7)(e).

7 USC 2018 (b)(7)(e). Appellant's average transaction is significantly higher than the state's average transaction. Additionally, the Case Analysis Document contains a comparison of Appellant's redemption activity during the analysis period to the five SNAP-authorized convenience stores located closest to Appellant. 7 USC 2018 (b)(7)(e). As previously stated, Appellant has a limited food stock typical of a convenience store and does not have any features that would induce people to spend substantially more than the typical convenience store purchase amount.

Based on the store layout, infrastructure, and available inventory, it is not credible that the Appellant would so frequently conduct transactions closely resembling those typically found at a supermarket or superstore. It is not plausible that the firm's customers would regularly carry very large amounts of merchandise around the store without the benefit of shopping carts or shopping baskets, especially since larger, better stocked stores are readily available and in the vicinity of the Appellant firm. Appellant is not set up to process high-dollar transactions, as indicated by its lack of equipment to facilitate large transactions and limited counter space. There are no legitimate bases for SNAP customers' unusual attraction to the firm such as a superior selection of staple foods, price advantages, package specials, bulk or promotional items, an extensive variety of otherwise unavailable ethnic food items, or special services rendered. Appellant failed to provide convincing evidence to establish the legitimacy of these excessively large transactions, such as itemized cash register receipts. Based on all of these factors, the large volume of transactions for high-dollar amounts is unlikely to indicate a pattern of legitimate food purchases.

### **No Control Over Benefit Use**

Appellant insists there is nothing in SNAP regulations that prohibit multiple transactions. In truth, SNAP households have no limits on the number of times they may use their SNAP cards or how much eligible food they may purchase. The SNAP transactions of Appellant are questionable not because they exceed any limits for use. Rather, they display characteristics not



typically found at convenience stores and indicative of trafficking.

### **No Applicable Mitigating Factors**

Appellant asserts that this is the first time there has been an issue related to SNAP and that it did not receive prior warnings. In this regard, a record of program participation with no documented previous violations does not constitute valid grounds for mitigating the impact of the present serious determination of trafficking. To require Appellant to receive a warning of violations before administrative action can be taken would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

Appellant contends the investigative report is inadequate as it is not signed under the penalty of perjury and the determination letter is flawed as it does not analyze or discuss the legal conclusions stated in the letter. There was no investigative report in this case. The determination letter, in accordance with the regulations, stated the basis for the sanction.

Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations 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 most serious, 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 must 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.

### **No Undue Hardship to Appellant**

Appellant maintains that disqualification would pose an extreme hardship to the firm. Economic hardship is a likely consequence whenever a store is permanently disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for reducing an administrative penalty on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To excuse Appellant from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

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

valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Evidence of Trafficking**

Appellant argues there is no direct evidence or proof of trafficking, and asserted FNS failed to conduct an analysis of the information contained in the charge letter. As previously stated, 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 . . . .*  
(Emphasis added.)

Government analyses of stores caught in trafficking violations during on-site investigations found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include those cited in the letter of charges. FNS employs a computerized fraud detection tool to identify these patterns. This tool does not determine that trafficking has occurred. The ROD must still analyze the transaction patterns, along with other information such as store visit observations, customer shopping patterns, and comparative data from nearby stores. Only then does the ROD conclude whether questionable transactions were, more likely than not, the result of trafficking. Nevertheless, transactions having such characteristics sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, which is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, based on the empirical data of past trafficking investigations, the number of suspicious patterns displayed, the other evidence in the file, and in the absence of any reasonable explanations for such transaction patterns, the preponderance of the evidence supports that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges are the result of trafficking.

### **No Denial of Due Process**

Appellant contends that it has been denied due process by FNS waiting almost nine months after the first alleged trafficking violation to charge the store. In this regard, the permanent disqualification of Appellant by the ROD is neither a criminal nor a civil action, but rather an administrative action imposed against the firm as a result of trafficking violations. Further, the charge letter was issued within three months of the end of the review period.

The agency’s due process procedures are two-fold in nature. First, the retailer is afforded an opportunity to reply to the charges leveled by the ROD. The regulations at 7 CFR § 278.6(c) state:

*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.*

After the determination letter is issued, the second level of due process involves an administrative review.

Appellant availed itself of this option and in the process of which Appellant was granted additional time within which to provide additional information in support of the request for review. Appellant took advantage of this opportunity and provided additional information.

The purpose of the administrative review process is to ensure that firms aggrieved by FNS's adverse actions have the opportunity for their position to be fairly considered by an impartial reviewing authority prior to that adverse action becoming final. Through the administrative review process, Appellant has been duly given, and has taken, the opportunity to present any evidence and information it deemed as pertinent in support of its position that the ROD's adverse action should be reversed. All evidence and information that Appellant presented to the ROD, as well as any such information submitted subsequently, have now been considered in this administrative review prior to rendering the final agency decision. No additional records were provided during the administrative review that would establish that the suspicious transactions were legitimate purchases. The record does not indicate any departure from established procedures with regard to Appellant's right to a fair and thorough review. Appellant has exercised its opportunity to reply to the charge letter and its administrative review rights, and by doing so has availed itself of the full complement of the agency's statutory obligations with regard to due process.

### **Summary**

The ROD determined that Appellant likely trafficked in SNAP benefits. The charges of violations were based on the ROD's assessment that there was substantial evidence that the questionable transactions occurring during the review period displayed patterns inconsistent with legitimate sales of eligible food to SNAP participants. The evidence the ROD considered in support of its determination included the irregular SNAP transaction data of Appellant as compared to similar stores, observations made during an store visit by a USDA contractor including the inadequacy of the firm's staple food stock to support such large transactions, the availability of other SNAP-authorized stores located close to Appellant, and shopping behaviors of Appellant's customers. The transaction data and overall firm record demonstrate the patterns of unusual, irregular, and inexplicable SNAP activity for this firm is likely the result of trafficking.

Upon review, Appellant failed to prove by a preponderance of the evidence that the administrative action should be reversed. Appellant provided inadequate explanations for the suspicious transactions and insufficient evidence to legitimize its transaction data. It has not convincingly rebutted the ROD's determination that Appellant most likely trafficked in SNAP benefits. The SNAP regulations are specific with regard to the action that must be taken if

personnel of the firm have trafficked, which is that FNS must disqualify the firm permanently.

### **CIVIL MONEY PENALTY**

7 CFR § 278.6(i) specifies the criteria for a firm's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty. Given these considerations, it is clear that the statute and the regulation allow no flexibility below the level of this stated standard. The record reflects that Appellant's reply to the charge letter fell short of this standard as noted in the following:

- Appellant provided no written and dated documentation which reflect a commitment to ensure that the firm is operated in a manner consistent with SNAP regulations;
- Documentation of the development and/or operation of a policy to terminate violating employees;
- Documentation of development and/or operation of procedures/policy to implement corrective action in response to complaints of violations;
- Documentation of development and/or operation of procedures providing for internal review of employees' compliance;
- Appellant did not provide documentary evidence which establishes that the firm's compliance policy and program were in operation prior to the occurrence of the violations at issue;
- Appellant did not provide documentation of dated training curricula and dates of training sessions prior to the violations;
- Contemporaneous documentation of participation of violating personnel in initial and follow-up training prior to violations;
- Appellant provided no documentation to demonstrate that its training program meets or is otherwise equivalent to the following standards:
  - Training for all who work in the store within one month of implementing the compliance policy documented in Criterion 1;
  - Any subsequently hired employees are trained within one month of hiring and trained periodically thereafter;
  - Training is designed to establish a level of competence that assures compliance; and
  - Written materials, which may include FNS publications and regulations, are used in the training programs;
  - Materials that clearly state that acceptance of SNAP benefits in exchange for cash, firearms, ammunition, explosives or controlled substances are prohibited and in violation of the statute and regulations; and,
- Appellant provided insufficient evidence in support the contention that ownership/management was not aware of, did not approve, did not benefit from or was not involved in trafficking.

In short, the various documentation provided by Appellant is not "substantial evidence" that fulfills each of the four criteria of 7 CFR § 278.6(i), demonstrating "that the firm had established

and implemented an effective compliance policy and program to prevent violations.”

Appellant argued that it should be exempt from some of these CMP provisions as the only people who worked at the firm was the owner and his wife. Appellant stated the two co-manage the firm. The owner’s wife is not listed as a co-owner on the Secretary of State website or in the information submitted to FNS for SNAP authorization. A co-manager would still be considered an employee. Further, to support eligibility for a trafficking CMP, even an owner is not exempt from the documentation requirements discussed above.

The standards of eligibility for a trafficking CMP are high in that they require that it be substantially shown that there is an established and implemented compliance policy and program, and that this had been in place prior to the occurrence of violations. This was perhaps to thwart efforts of firm’s attempting to falsely present compliance policies and programs that actually were not implemented prior to violations. Nevertheless, such is the standard required by the regulations, and to which Appellant is held during the course of this review.

The regulations direct that the policy and program are structured to prevent all violations, regardless of cause. While significant effort may be required to develop and maintain a compliance policy and program, if such fails to meet the requirements, that level of effort, even if substantial, does not mitigate the insufficiency. Additionally, the size of an organization, or number of personnel, is not a consideration in determining the eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking. Also, as noted, the criteria for eligibility for a civil money penalty in lieu of permanent disqualification are clearly stated as minimum standards below which eligibility is precluded.

As Appellant did not provide the required supporting documentation, the ROD did not assess a CMP. According to the requirements stated in 7 CFR § 278.6(b)(1), § 278.6(b)(2)(ii and iii), and § 278.6(i), Appellant is not eligible for a CMP in lieu of a permanent disqualification from participation as an authorized retailer in SNAP. The determination by the Retailer Operations Division to deny Appellant a civil money penalty is sustained.

## **CONCLUSION**

The record has yielded no indication of error in the finding by the Retailer Operations Division that Appellant trafficked in SNAP benefits. A review of the evidence in this case supports that it is more likely true than not true that program violations did occur as charged. Based on the discussion above, the determination by the Retailer Operations Division to impose a permanent disqualification against MN Tasnia Inc./MDI Convenience Store from participation as an authorized retailer in SNAP is sustained.

## **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

