

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

M's Mart,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0196632

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) that the permanent disqualification from the Supplemental Nutrition Assistance Program (SNAP) imposed upon M's Mart (hereinafter "Appellant") by the Retailer Operations Division, Investigations and Analysis Branch, hereinafter "ROD Office" is hereby reversed; however, the firm must undergo reauthorization by the Retailer Operations Division in order to determine SNAP eligibility.

ISSUE

The issue accepted for review is whether the ROD Office took appropriate action, consistent with 7 U.S.C. § 2021, 7 CFR § 278.6(a) and 7 CFR § 278.6 (e)(1) and (i) in its administration of the SNAP when it imposed a permanent disqualification upon Appellant.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 C.F.R. § 279.1 provide that "A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS."

CASE CHRONOLOGY

In a letter dated February 7, 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 through November 2016. The letter noted that the sanction 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 10 days of receipt under the conditions specified in 7 CFR §278.6(i). The record reflects that the SNAP Office received and duly considered Appellant's replies to the Charge Letter. By a letter dated May 15, 2017, Appellant was informed that it was permanently disqualified from participation as a retail store in the SNAP and was ordered upon receipt of the letter to cease accepting SNAP benefits; consequently, Appellant ceased to accept said benefits. On May 18, 2016, Appellant requested an administrative review of the SNAP Office's decision; the request was granted.

STANDARD OF REVIEW

In appeals of adverse actions an appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed. That means 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

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 U.S.C. § 2021 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6 (e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern.

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

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

7 CFR § 278.6(a) states, *inter alia*:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *inter alia*:

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

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

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

7 CFR §278.6(i) states, *inter alia*:

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

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

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 THE CHARGES

- A series of 1451 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**

ended in same-cents values (Attachment 1).

- 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- A series of multiple SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from individual benefit accounts in unusually short time frames (Attachment 2).
- A series of 1126 excessively large SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) were debited from recipient accounts (Attachment 3).

APPELLANT'S CONTENTIONS

In Appellant's reply to the Charge Letter, in its written request for review dated May 18, 2016, and in subsequent correspondence, it was argued that:

1. Appellant has never before been accused of SNAP-benefit trafficking or found in violation of any state or federal laws relating to its participation in any governmental assistance programs.
2. Appellant requests that USDA provide it an opportunity to respond to the review findings; without such opportunity there is no due process. Administrative review decision numbers from 2014 bear this out due to the small number of reversals. Appellant provides a copy of the "SNAP Retailer Management 2014 Annual Report."
3. The Owner of the Appellant firm would not risk everything he has accomplished by violating the SNAP regulations. The market is important to the community also; Appellant provides a letter from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) former Mayor of East St. Louis in support thereof.
4. The firm is not just a convenience store but also operates as a prepared food carryout/restaurant in which food is cooked after customers pay for it (photos of kitchen provided in Exhibit A). The cooking is often done while customers complete other grocery shopping at the store, which results in additional transactions. Food preparation constitutes a substantial part of the firm's revenue (approximately 35%). This is consistent with recent studies showing that a majority of people now prefer to eat in restaurants or purchase prepared foods over cooking at home (Exhibit B). Some customers buy food in bulk from the store, such as raw or cooked chicken wings (\$39.99) or five-gallon buckets of dill pickles (\$27.99). The firm uses Facebook to run daily specials or to offer bulk specials. Copies of the Facebook screenshots are included as Exhibit F. The most compelling evidence that the transactions were not trafficking is the receipts showing the actual items purchased by customers. Appellant does not maintain copies of the receipts in the ordinary course of business; instead daily, weekly and monthly totals are kept. However, Appellant found the daily receipts for several days in September 2016 and these are attached as Exhibits G. The store uses two registers so not

all transactions from these dates in the Charge Letter will be on this one register tape. Transactions 1 and 10 involved the purchase of five items each, thus resulting in a large total; there is nothing questionable about the transactions when you see the detail. Similarly, transactions 3 and 6 involve the purchase of two items priced at \$6.99 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Transaction 8 involves the purchase of a bulk item at \$25.99. There is no evidence in the receipts that the store has ever trafficked in SNAP benefits. Same- cents transactions are explained by the firm's pricing, the vast majority 5 U.S.C. § 552 (b)(6) & (b)(7)(C); 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5. The store is near several public and subsidized housing projects (see Exhibit C) and is one of the poorest areas in the country; there are few options for people in the area to purchase food, so they rely upon the Appellant firm as their grocery store. The firm is located in a low-income area where most households receive public assistance and tend not to have access to private transportation and thus walk to the Appellant store to purchase food. Additionally, three neighborhood stores within one mile of the Appellant firm have stopped accepting SNAP benefits over the last six months (this was stated in Appellant's March 14, 2017 reply to the Charge Letter). One was terminated from the SNAP in June of 2016 and another in November 2016. During this time Appellant's SNAP receipts have increased 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which has nothing to do with trafficking but only with people relying on the store as their only option for food. Appellant provides a map showing where the closed stores were located as well as where other SNAP-authorized firms are located.
6. A disqualification will work a hardship upon SNAP households; for this reason alone the firm should be given a civil money penalty in the event the disqualification is not reversed.
7. The store visit took place on October 26, 2016; the inspector came to the store in the morning and the market was scheduled to receive a large order from its supplier, Sysco Foods, that afternoon. Some of the firm's inventory was sold-out and the firm had also been cleaning shelves; a store representative asked the inspector to photograph the storeroom so that the overall inventory would be put into perspective, but the inspector stated that he was not permitted to photograph anything other than what was on the shelves. The shipment of inventory arrived later that day and the firm took photos of this inventory, which Appellant provides in its June 15, 2017 letter in support of its review request.
8. Multiple customer transactions do not demonstrate trafficking; there are several far more reasonable explanations for these transactions. Customers visit the store multiple times per day. Customers forget items and return to the store. Sometimes households share the card and multiple purchases during a single visit. Sometimes a customer purchases food to be prepared on site, pays for that food before it is prepared and then, while waiting for the food to be cooked, makes an additional purchase. Additionally, some SNAP recipients trade and/or sell the items they purchase for cash or other

consideration or allow someone else to use their SNAP benefit card for cash or other consideration. There is no way for the store to discover this activity, though it has caught and refused service to two SNAP recipients who were selling use of their cards to others for money.

9. According to USDA's statistics, 100% of the transactions listed in Attachment 3 are within the weekly cost of food for a family of two and 95% of the transactions are below the weekly average of a single person. The transactions contained in the Charge Letter include prepared food such as chicken wings, chicken tenders, which range in price from \$6.99 to \$19.99.
10. The store's inventory matches its sales. Appellant provides copies of invoices in its Exhibit E. SNAP-eligible products constitute 95% of the firm's sales. Total sales ranged 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in June to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in November and inventory purchases for the same period 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 5 U.S.C. § 552 (b)(6) & (b)(7)(C), in line with national averages. Over the analysis period, Appellant purchased 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food inventory, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant provides copies of product purchase receipts/invoices as Exhibit E.
11. The cash register receipts also explain the higher priced transactions; four of the transactions in Exhibit G 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As can be seen, they each typically include at least one higher-priced item, maybe a large cooked item or a bulk item, along with smaller items. Exhibit I transactions do not appear in the Charge Letter, but demonstrate that large purchases are not uncommon at the store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
12. A comprehensive presentation of evidence was submitted to the ROD Office demonstrating that every transaction cited was permissible. Appellant provides a copy as part of the administrative review request. There is no indication in the Determination Letter as to why the ROD Office determined that violations occurred. The information and evidence available to the USDA did not include a single individual witnessing a single transaction where the store was allegedly trafficking in SNAP benefits. There is no evidence of trafficking at the Appellant store other than a computer printout, which can be explained as legitimate and legal transactions. The ROD Office's determination of SNAP benefit trafficking, solely on the basis of numbers generated by a computer program, is arbitrary, capricious and against the strong weight of the evidence.

ANALYSIS AND FINDINGS

At the outset it should be noted that the ROD Office ordered a contracted store visit to the Appellant firm as part of its investigation into Appellant's questionable transaction activity; the visit was conducted on October 26, 2016, as a result of which documentation was obtained including photographs of the interior and

exterior of the store, a store layout diagram and a store inventory survey. This documentation reflected the following:

- No optical scanners.
- No shopping carts or baskets.
- Two cash registers.
- One card reader near the register on the left hand side while facing the customer side of the counter.
- No meat/seafood bundles/specials or fruit/vegetable boxes.
- Estimated approximately 650 square feet of store space.
- Not a delivery route, farmer's market or specialty food store.
- The firm sold tobacco and tobacco-related products, alcohol, automotive supplies, health and beauty products, cleaning products, clothing, cell phones and other small electronics, and other non-food items.
- Empty/sparsely-stocked shelves/coolers. Photos: 2, 5, 7, 9, 10, 11, 13, 15, 16, 30, 34, 35, 36, 37 and 38.
- Canned goods appeared dusty. Photos: 5, 7, 10, 13, 16, 29, 30, 34 and 38.
- Hot food sold. The firm maintained a commercial kitchen/food preparation area. Photo: 17.
- Exterior signage advertised the firm as a restaurant and displayed a marquee with prepared food entrees. Food preparation inventory in commercial-sized containers was placed in front of the deli case, including large containers of cooking oil. The firm operated as a prepared food carry-out/restaurant. Photos: 2, 6, 12, 17, 26, 27 and 35.
- Otherwise the firm was a typically-stocked convenience store. Photos: 1, 4, 5, 23 and 25.
- Useable counter-space approximately 1.5 X 1.5 feet at each register, surrounded by candy, tobacco and tobacco-related products, alcohol, electronics, clothing and other non- food items. Photos: 18, 19, 24 and 25.
- Several prices in standard retail variations of \$.x9. Photos: 20, 22, 23, 26 and 27.

The documentation presents no indication of advertised specials or promotions, other than prepared food entrees. As noted above, photographs reflect that several visible prices of food and other items were in standard retail variations of \$.x9. The checkout area was set up in convenience store fashion, utilizing a small check-out area approximately 1.5 X 1.5 feet at each register, surrounded by candy, tobacco and tobacco-related products, alcohol, electronics, clothing and other non-food items. There were no shopping carts or baskets with which customers could transport large orders to the small check-out area or to waiting transportation. This documentation reflects that the firm was a typically-stocked convenience store in all relevant respects, with the exception of the firm's commercial kitchen/food preparation area and prepared food entrees. It is worth noting that the average SNAP purchase in a convenience store in the state of Illinois during the analysis period was \$6.35, reflecting that large purchases are not routinely made in such stores.

In regard to contention 1 above, Appellant notes that this case represents the firm's first and only SNAP violation (or series of same); however, a record of program participation with no previously or subsequently documented violations does not constitute valid grounds for dismissing the present serious charges or for mitigating the impact of the violations upon which they are based. There is no provision in the Act, regulations or agency policy that reverses or reduces a sanction based upon a lack of prior and/or subsequent violations or assurances of future compliance by a firm and its owners, managers and/or employees; likewise, sanctions for prior violations are not prerequisite to sanctions due to later violations. Moreover, prior sanctions may precipitate an increase in the severity of a later sanction (see §278.6(e)(6)). Further, as noted above, the Food & Nutrition Act of 2008 provides that a store's disqualification "*shall be* (emphasis added) permanent upon ... the first occasion of... trafficking."

Regarding contention 2 above, the agency's due process procedures are two-fold in nature: a retailer aggrieved by an agency action is afforded an opportunity to reply to the charges specified by the ROD Office; Appellant has availed itself of this first aspect of the due process procedures in the form of both verbal and written replies to the ROD Office. As noted, the record reflects that the ROD Office has duly considered these replies. The second level of due process involves an administrative review, of which Appellant has likewise availed itself and in the process of which Appellant was granted an additional three weeks to provide further information in support of the request for review. Appellant did in fact provide additional correspondence dated June 15, 2017. The purpose of the administrative review process is to ensure that firms aggrieved by FNS's adverse actions have the opportunity to have their position fairly considered by an impartial reviewing authority prior to that adverse action becoming final. Appellant has been duly provided, and has taken, the opportunity to present to USDA through the administrative review process whatever evidence and information it deems as pertinent in support of its position that the ROD Office's adverse action should be reversed. Therefore, any evidence and information that Appellant presented to the ROD Office, as well as any such information submitted subsequently, have now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or 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 so doing has availed itself of the full complement of the agency's statutory and regulatory obligations with regard to due process. In addition, in cases in which an Appellant is aggrieved by the administrative review decision, Appellant may pursue judicial review as a further element of due process.

With regard to contention 3 above, while the contention may or may not be true, it doesn't provide a compelling rationale to conclude that SNAP-benefit trafficking did not occur at the firm during the analysis period at issue in the

present case (June through November 2016); for example, a finding of SNAP-benefit trafficking need not involve ownership's knowledge, complicity or benefit.

In regard to contention 4 above, it is acknowledged that the firm also operates as a restaurant /carryout, as referenced in the store visit documentation noted above. It is noted for the record that the agency does not authorize firms that operate primarily as restaurants in the SNAP (with the exception that certain states operate restaurant programs); moreover, prepared ready-to-eat hot or cold food is not considered a staple food item and, as such, does not contribute to a firm's eligibility to participate in the SNAP under Criterion A or B (see 7 C.F.R. § 278.1(b)). Furthermore, hot prepared food is not a SNAP-eligible food item.

The issue in the present case is whether or not the firm's restaurant/carryout activities more compellingly (than SNAP benefit trafficking) explain the transactions contained in the Charge Letter. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant stated that five-gallon pails of pickles were popular items among SNAP customers. It appears very unlikely, however, that SNAP customers would purchase two five-gallon pails of pickles (even one seems somewhat unlikely, given the difficulty most households would have with refrigerated storage for such an item), so transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) would not appear at all likely; in fact no transactions at these amounts (5 U.S.C. § 552 (b)(6) & (b)(7)(C)) appear in Attachment 1, while 13 appear 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Moreover, Appellant's invoices reflected the purchase of only three pails of pickles during the analysis period.

However, an entrée priced at \$18.99 combined with one of the other entrées can produce totals ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which would cover nearly the entirety (all but 18) of the transactions ending 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in Attachment 1. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While this leaves some transactions unexplained, it does provide a plausible rationale for a substantial majority of them. Appellant does not provide pricing for meat items seen during the store visit, such as pork spare ribs. Nonetheless it is not unreasonable to allow that these would be somewhat expensive and also priced using Appellant's usual \$.x9 format, which could explain more of the Attachment 1 transactions.

Given the above, the ROD Office's Attachment 1 evidence appears substantially refuted by the information in the record regarding the firm's operation as a carryout/restaurant and the information obtained during the store visit.

Regarding contention 5 above, that the firm was located in a low-income area with many SNAP recipients, while it might help explain SNAP volume as a percentage of the firm's gross food sales, offers no compelling evidence to disprove trafficking; in fact it is not uncommon for stores engaging in SNAP-benefit trafficking to be located in such areas. On the other hand, if a firm sells hot food entrees in exchange

for SNAP benefits it is reasonable to expect that firm to attract a substantial number of SNAP customers.

Appellant notes that nearby SNAP-authorized firms have closed, driving more SNAP customers to shop at the store. The ROD Office notes that one of the firms referenced was in fact never SNAP-authorized prior to or during the analysis period, one was permanently disqualified near the end of the analysis period at issue and one was permanently disqualified after the analysis period; thus, these other firms' activities would not have any substantial impact upon the present case. The ROD Office further notes that there were several SNAP-authorized firms within a one-mile radius of the Appellant firm, including one super store, one supermarket, one medium grocery store, one small grocery store and 19 other convenience stores. It is unknown but unlikely, however, that any/many of these other stores accepted SNAP benefits in exchange for prepared hot food entrees.

With regard to contention 6 above, the issue of hardship worked upon retailers or SNAP clients is not a consideration under the statute or regulations in decisions to disqualify firms due to SNAP-benefit trafficking. The only alternative to permanent disqualification, once trafficking is established, is to impose a trafficking civil money penalty in lieu of permanent disqualification. In order for this alternate penalty to be considered, a retailer must provide sufficient evidence demonstrating that the firm had established and implemented an effective compliance policy and program to prevent violations prior to said violations, as stipulated in § 278.6(i). Appellant did not request consideration for same and did not provide such evidence; accordingly, this alternate penalty was correctly withheld. Additionally, as the permanent disqualification is reversed, consideration of a civil money penalty in lieu thereof is moot.

In regard to contention 7 above, while the photographs provided by Appellant are dated, it is unclear why they were not provided to the ROD Office in reply to the Charge Letter. Nonetheless, the photos show cases of soda, boxes of cookies, boxes of ramen noodles, boxes of potato chips and some boxes of unidentifiable products; Appellant does not explain the nature of the inventory received or how it disproves SNAP-benefit trafficking. Appellant did not provide a copy of an invoice from Sysco for the inventory it said it received on October 26, 2016; moreover, no receipts/invoices from Sysco are found in the record. It is added that the products that can be identified appear to be typical convenience store inventory.

Regarding contention 8 above, while transactions due to purchases of prepared foods could appear reasonable 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Large prepared food purchases, in combination with small, typical convenience store transactions appear reasonable 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted, there are only two of these, however; as noted it is acknowledged that the firm stocked expensive meat items on the day of the store visit. Such could possibly account for these transactions. Such might also account for the first two sets of transactions in Attachment 2 in which

individual households conducted two large transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is acknowledged as well that there are 27 sets of transactions contained in Attachment 2. Nonetheless, the prepared food rationale, combined with expensive meat items, leaves Attachment 2, as evidence of trafficking, less compelling than the evidence in the record showing that the firm operated as a prepared food carryout/restaurant which accepted SNAP benefits in exchange for hot prepared food entrees.

With regard to contention 9 above, while the transactions in Attachment 3 are, as Appellant states, within the weekly cost of food for a family of two (using USDA data), the transactions are highly unusual for a typically-stocked convenience store. It is acknowledged that Attachment 3 transactions, while implausible when considering most of Appellant's eligible food offerings (typical convenience store inventory, with the exception of expensive meat items), are less implausible when it is acknowledged that the firm was operating as a carry-out/restaurant accepting SNAP benefits for hot food entrees. While hot food is not eligible for purchase with SNAP-benefits, this is a separate issue from SNAP-benefit trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Given that Appellant did in fact stock expensive meat items, as seen in the store visit photographs, and that the firm clearly operated as a prepared food carryout/restaurant accepting SNAP benefits for hot prepared food entrees, these transactions, while much too high to be compelling for a typically-stocked convenience store, are not viewed as implausible given the record.

In regard to contention 10 above, the ROD Office completed an exhaustive analysis of the product purchase receipts/invoices provided by Appellant and found the documentation fell short of fully supporting the firm's SNAP sales. However, it is acknowledged that not all of Appellant's invoices could be used, for various reasons; additionally, it is clear the firm had inventory at the time of the store visit that was not reflected in invoices, such as the pork spare ribs. Thus, this review finds the invoices and the analysis inconclusive; while the total amount of the invoices is insufficient, they generally support Appellant's primary contention with regard to the sale of prepared food, which tends to provide a plausible explanation for much of the Charge Letter data.

Regarding contention 11 above, the cash register receipts provided by Appellant pertaining to the analysis period and corresponding to Charge Letter transactions, being only 13 in number and, moreover, not specifically identifying the products purchased, are not particularly useful in disproving SNAP-benefit trafficking. The receipts not pertaining to SNAP transactions do tend to show, however, that the firm conducted sizeable food-related transactions during the analysis period, even if the sales may include a considerable amount of SNAP-ineligible food items (prepared hot food entrees).

With regard to contention 12 above, Charge Letters are not required by regulation or agency policy to provide investigative techniques/case analysis standards or even to provide a totality of the evidence contained in the case file, but rather to present a

firm with transactions the ROD Office has found to be implausible given various considerations and to provide the firm the opportunity to explain how such transactions may be legitimate. Appellant asserts that the substance of the ROD Office's case against the firm is derived from data only and implies that there were no independent witnesses to affirm the trafficking allegations. 7 CFR §278.6(a), noted above, establishes the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. Such cases are developed with the standard in mind that a *prima facie* preponderance of evidence is sufficient in order to charge a firm with SNAP-benefit trafficking. Various statistical tools and graphical reports are utilized, as well as store visit documentation reflecting the firm's nature and extent of inventory and the firm's logistical wherewithal. Compliance history and household data are evaluated. The record reflects that Appellant's firm was chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms applied not only to Appellant's firm but to all SNAP-authorized firms, including all firms of a like type (convenience stores, in this case) in the state of Illinois. As noted, the record contains documentation, including photographs of the firm's interior and exterior, an inventory survey and a layout diagram, of a visit to Appellant's firm conducted on October 26, 2017. These documents reflect the firm to have been a typically-stocked convenience store, but one that also operated as a prepared food carryout/restaurant and also sold expensive fresh meat items. The firm also maintained a substantial inventory of accessory food items (candy, beverages, etc.), which is typical of convenience store stock.

Thus, as discussed above, while on balance the evidence preponderates in favor of the Appellant's assertions that the firm did not engage in SNAP-benefit trafficking, the ROD Office's analysis leading up to the issuance of the Charge Letter is not viewed as arbitrary or capricious and in fact appears well within agency parameters. This review merely takes issue with the ROD Office's evaluation of the relevant evidence, primarily the weight of the evidence relating to the firm's carryout/restaurant operation. None of the above should be taken to mean that the sale of hot food in exchange for SNAP benefits is condoned; however, such sales are not viewed as trafficking in the present case.

CONCLUSION

In view of the above, the decision of the ROD Office to permanently disqualify Appellant from participation in the SNAP is hereby reversed. However, it is far from clear that the Appellant firm qualifies to participate in the SNAP. Therefore, while the permanent disqualification is reversed, the firm must undergo the agency's reauthorization process so that an accurate assessment of the firm's eligibility can be conducted. The decision will become final upon the 30th day following Appellant's receipt of this document.

RELEASE OF INFORMATION

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

DANIEL S. LAY
Administrative Review Officer

December 26, 2017