

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

Nawah Market & Deli,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0227826

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification of Nawah Market & Deli (“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 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Nawah Market & Deli.

AUTHORITY

7 U.S.C. § 2023 and 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

Nawah Market & Deli was initially authorized to participate in SNAP on April 17, 2019. In a letter dated April 21, 2020, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of October 2019 and February 2020 and information obtained during a visit to the store by an FNS contractor on February 28, 2020. The attachments enclosed with the charge letter specify the questionable and unusual SNAP transactions

indicative of trafficking that were conducted at Appellant's firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). The letter also stated that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the trafficking charges by telephone on May 5, 2020, and in writing on May 18, 2020. During the May 5, 2020, telephone conversation, the Retailer Operations Division explained the charges to the Appellant and his bookkeeper and discussed an issue identified with the point-of-sale (POS) devices in the Appellant's stores. Specifically, Appellant owns two stores that are side-by-side, with each having a separate customer entrance. Employees can go to each store on the interior of the building, but customers do not have this access and must enter each business from the designated outside entrance for each store. One store is a smoke (tobacco) shop that does not sell SNAP eligible foods and is not SNAP authorized, while the second store is SNAP-authorized and does sell SNAP eligible foods. However, transactions listed on the attachments to the charge letter appear to come from two terminals. Appellant denied this could have occurred because he said transactions were never processed from the smoke shop. Appellant sought an extension to submit documentation to show this. The Retailer Operations Division granted an extension until May 17, 2020.

On May 18, 2020, Appellant emailed a short response to the charges stating that he had made every effort to remain in compliance with SNAP rules and regulations and has taught his children to follow these guidelines. Appellant's bookkeeper also faxed copies of 37 register receipts covering January and February 2020, and nine invoices for inventory that was purchased during the investigation period of October 2019 through February 2020. The bookkeeper said that the bank said that the smoke shop terminal had no ability to process SNAP benefits, that the transactions could not be explained, and that additional time was needed to research the issue. No further extension was granted, however.

After considering Appellant's reply and further analyzing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated June 17, 2020. This letter informed Appellant that the firm would be permanently disqualified from SNAP upon receipt of the letter, in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that Appellant was not eligible for a trafficking CMP in accordance with paragraph § 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked July 16, 2020, Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving, by a preponderance of the evidence, that the administrative action should be reversed. This means the appellant has

the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW & REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:
disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of [SNAP benefits] or trafficking in [SNAP benefits] 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 § 271.2 states, in part:
Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption....

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

7 CFR § 278.2(a) states, in part:
[SNAP benefits] may be accepted by an authorized retail food store only from eligible households...only in exchange for eligible food. [SNAP benefits] may not be accepted in exchange for cash...[and] may not be accepted in payment of interest on loans or for any other nonfood use.

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, [or] evidence obtained through a transaction report under an electronic benefit transfer system.... Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for [a] period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. [Emphasis added.]

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.

7 CFR § 278.6(e)(1)(i) states, in part:

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

7 CFR § 278.6(i) states, in part:

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.

SUMMARY OF CHARGES

Nawah Market & Deli was charged with trafficking and subsequently permanently disqualified from participating in SNAP based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for October 2019 through February 2020. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the attachments enclosed with the charge letter reflected the following transaction patterns, which commonly indicate trafficking:

- **Charge Letter Attachment 1:** There were a large number of transactions ending in a same cents value.
- **Charge Letter Attachment 2:** There were multiple transactions made from one or more SNAP households within a short timeframe.
- **Charge Letter Attachment 3:** There were multiple transactions made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 4:** There were transactions in which the bulk of SNAP households' remaining benefits were depleted within short time frames.
- **Charge Letter Attachment 5:** There were transactions that are large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contentions as part of its request for administrative review, and in supplemental correspondence emailed on August 5, 2020, and August 6, 2020, in relevant part:

- Appellant was in touch with his case manager who was investigating the issue, but when she did not hit him with any new news, he thought the case was over until he received a letter saying the store was disqualified.
- Appellant was able to get his merchant statements.
- Appellant's bank said they could not find any history of EBT transactions occurring on the processor for the tobacco side of his store.
- Appellant does not remember the dates the case manager reviewing the case was saying when an EBT transaction was happening.
- Appellant's business is hurting with food stamps not working, especially with this disaster that is going on.
- Appellant wants to present the information asked for so he can keep working and help support his family.

In support of these contentions, Appellant submitted a card processing statement from his bank for the month of January 2020.

The preceding may represent only a brief summary of the Appellant's contentions and evidence submitted. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the trafficking determination. Once a trafficking determination is made based upon EBT data and information obtained during a store visit, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Store Visit Report

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a store visit conducted by an FNS contractor on February 28, 2020, to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- The firm is a convenience store, approximately 2,500 square feet in size, with no storage outside of public view and no storage coolers or freezers.
- At the time of the store visit, the firm had no shopping carts or shopping baskets for customers to use.
- The store visit photographs show two cash registers for food purchases and agency records reflect the use of two EBT terminals.
- It appears that the firm uses optical scanners to process transactions.
- The checkout area consists of a small and cluttered counter space where items can be placed for purchase.
- The store's staple food stock meets SNAP program eligibility requirements; the food selection is typical of a convenience store. The store does not sell specialty items such as bundles of meat or seafood or large boxes of fruit and vegetables.
- SNAP-eligible, non-staple, accessory food items available at the store include carbonated and uncarbonated drinks, snacks, candy, and condiments. The store also sells ineligible, nonfood items, including paper goods and cleaning products, and has ATM or money transfer services.
- The store has a kitchen area, where hot foods are prepared for purchase, including burgers, chicken wings, chicken strips, fries, and hot sandwiches.
- There is no indication from the store visit report that the firm has a special pricing structure, except that most prices appear to end in 9, such as \$0.99, \$1.99, etc.
- Store personnel confirmed that the store does not round prices up or down at checkout.
- Store personnel confirmed that no food was stored offsite.
- The store did not sell any specialty or international foods that would normally sell for a high price.
- The store does not take telephone or online orders, nor does it offer delivery.
- During the store visit, store staff verbally reported that the most expensive food items for sale include an 8-count package of frozen beef patties for \$35.00; an 11-ounce package of Banquet chicken for \$6.99; a 19-ounce package of Stouffers lasagnas for \$7.69; and a 12.4-ounce package of infant formula for \$18.99. However, during the May 5, 2020, telephone conversation between the Retailer Operations Division and the store owner, the store owner claimed to sell 20-pound bags of frozen chicken wings to SNAP customers. Store visit photos showed that these same wings were cooked and sold hot in the store. When questioned further, the store owner could not specify the proportion of wings sold hot, as opposed to being sold frozen. No price was given for frozen wings.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store, where households normally purchase a limited number of items to complement their overall dietary needs. Given the size of the store and availability of food items, it appears unlikely that households would frequently visit Nawah Market & Deli to purchase large quantities of groceries, especially considering the absence of shopping carts and baskets, the constricted checkout area with little counter space to place more than a few items at a time, and the availability of much larger grocery stores in the area, including two super stores, a supermarket, and four medium grocery stores within a one-mile radius. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant

firm's SNAP redemption patterns would differ significantly from those of nearby, similarly-sized stores offering similar food items.

SNAP Transaction Analysis

Charge Letter Attachment 1: A large number of transactions ending in a same cents value.

During the review period, Nawah Market & Deli conducted 443 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This attachment lists 125 transactions, or 28.22%, of these transactions ending in "00" cents, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. This shows a significant percentage of the store's large dollar transactions ending in 00 cents despite the store having most food items priced at amounts ending in nine cents, as confirmed by the store visit.

A store having many transactions ending in the same cents value is unusual. Sets of repeating digits do not regularly occur in legitimate transactions. In the absence of any compelling evidence to the contrary, these patterns strongly indicate that a firm is trafficking in SNAP benefits.

Appellant has provided no explanation as to why so many large dollar transactions at the store end in the same cents value. Appellant did submit a number of cash register receipts to the Retailer Operations Division in response to the charge letter. A few of these receipts ended in same cents values. However, a few receipts, without more, does not explain the frequency of such transactions at the store. This is particularly true given the information gathered during the store visit regarding the pricing structure of the store and that transaction totals are not rounded at checkout.

Further, based on the store visit report, Appellant's food inventory consists primarily of inexpensive canned and packaged goods, single-serving food items, and accessory foods. The larger dollar transactions cited in Attachment 1 would likely consist of multiple food products being purchased in the same transaction. It is implausible that so many transactions that necessarily include several relatively inexpensive items purchased together, would occur as to result in a disproportionate number of transaction totals ending in "00" cents. Given Appellant has not offered any explanation, or sufficient evidence, to demonstrate that the transactions in Attachment 1 were legitimate purchases of eligible food, the preponderance of the evidence weighs in favor of the likelihood that the transactions in question were the result of trafficking.

Charge Letter Attachment 2: Multiple transactions were made from one or more SNAP households within a short timeframe. This attachment lists 23 sets of transactions (46 transactions in all) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits.

Considering this store has a very small and cluttered checkout area, no shopping baskets or carts for customers to use, and considering the number of items that it would typically take to add up to the dollar amounts found in this attachment, it is unlikely that legitimate transactions could have occurred in such short periods of time. Each set of transactions in Attachment 2 was made from the same POS device, even when it involved two different households. Processing

transactions for multiple items totaling to large dollar amounts would take a longer amount of time for clerks than is reflected in these transaction sets.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant has offered no explanation or evidence to explain these unusual transactions.

Charge Letter Attachment 3: Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 57 sets of transactions (127 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For perspective, during the review period, the average transaction amount for a convenience store in California was \$7.30; in Alameda County, it was \$8.10.

SNAP households have no limit on the number of times they may use their SNAP benefit cards, or on how much eligible food they may purchase. However, violating stores are known to conduct multiple transactions using the same household account within a short period of time to avoid the detection of single high-dollar transactions that cannot be supported by the retailer's inventory and structure. When a store's transaction patterns are inconsistent with the nature and extent of a store's inventory, conditions, and facilities, this is indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)0. Given the store's price structure, inventory, and condition, and relative to the average transaction amounts for convenience stores in the same County and State, it is unlikely the store conducts legitimate business at these volumes. The transaction sets included one household that returned to the store five times over the course of three days, for transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While each of the five transactions were for different dollar amounts, three ended in "00" cents and two ended in "50" cents. As provided above in the discussion of Attachment 1, repeated cents values are suspicious; this is particularly true when they occur in high dollar amounts with the same household over the course of consecutive days.

Again, Appellant has provided no rationalization or evidence to explain the highly unusual transactions in Attachment 3.

Charge Letter Attachment 4: Transactions in which the bulk of SNAP households' remaining benefits were depleted within short time frames. This Attachment lists 58 sets of SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In 38 of the transactions listed in Attachment 2, households depleted their SNAP account balances in only one transaction. A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It typically takes 14 days to deplete 80 percent of a household's benefits, and 21 days to deplete 90 percent. This report also revealed that households most often redeemed their benefits at supermarkets and

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

supercenters, with only four percent of all households never shopping in a supermarket. Making single or multiple transactions of large dollar amounts, or cumulatively large dollar amounts, and/or depleting substantial amounts of one's benefit allotment in one day, leaving a marginal amount or no benefits for the rest of the month, is inconsistent with typical shopping behavior of SNAP households. Likewise, it is extremely doubtful that a SNAP household making a legitimate purchase would choose to spend a large portion of its monthly allotment at a convenience store with likely higher prices and substantially less inventory than what would be found at a supermarket or superstore.

Appellant provided no evidence to explain the transaction irregularities in Attachment 4. Based on the analysis above, and in the absence of evidence to the contrary, the irregular transactions patterns contained in Attachment 4 or more likely than not indicative of trafficking.

Charge Letter Attachment 5: There were transactions that are large based on the observed store characteristics and recorded food stock. This attachment lists 322 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transactions are not consistent with a convenience store in the State of California. As previously noted, the Retailer Operations Division determined that during the review period, the average transaction amount for a convenience store in California was \$7.30; in Alameda County, it was \$8.10. The average transaction in Attachment 5 is more than 10 times larger than either of these amounts.

The case record also documents that the Retailer Operations Division conducted a detailed analysis of three (3) households with irregular transactions identified in the charge letter to analyze their shopping patterns at Nawah Market and Deli compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at, supermarkets and/or superstores. Despite this access to larger and better stocked stores, these sampled households also conducted excessively large transactions at Nawah Market and Deli on the same day or within a few days of shopping at a supermarket or superstore. It is highly unlikely that a convenience store, with a limited selection of staple foods, would have legitimate high dollar SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores.

Following receipt of the charge letter, Appellant had submitted to the Retailer Operations Division nine inventory purchase invoices and receipts for the review period, presumably to show sufficient inventory to support large purchases. Six of these were cut in half so that the entire invoice could not be read, including the purchase totals. The remaining three invoices show inventory purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This amount falls far short of supporting the large transaction amounts described above, and does not explain the irregular transaction patterns cited in the charge letter.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. Further, the limited counter space at the register and the fact that the store has no shopping baskets or carts supports the Retailer Operations Division's determination. Based on a preponderance of the evidence, the irregular transaction patterns cited in charge Letter Attachment 5 are more likely than not the result of trafficking in SNAP benefits.

Appellant's Evidence

In addition to the invoices discussed above, Appellant submitted around 37 register receipts covering January and February 2020 to the Retailer Operations Division. Appellant also submitted a card processing statement from his bank for the month of January 2020 for this review.

Regarding the register receipts, the Retailer Operations Division did not accept these as compelling evidence, in part, because they contained very vague descriptions of the items sold. Most items are listed on the receipts as "Snacks" or "Frozen." A few items are categorized as "General Food," "Produce, or "Grocery Non-Taxable." Items sold as "Snacks" were for incredibly high amounts of up **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Each receipt indicates "Cash" as the form of tender; none indicate SNAP benefits. While many of the receipts match transaction times and totals on the charge letter attachments, they cover only a small number of those transactions. Some are for the same dollar amounts, but for different times than are listed on the charge letter attachments. Other receipts are not on the charge letter attachments at all, though they would be if they were actually SNAP transactions. The receipts are not descriptive enough, and are inadequate, to document the validity of the transactions they reflect. Even if these receipts reflect legitimate SNAP purchases, they are not sufficient to explain the hundreds of questionable transactions in this case.

Appellant and the Retailer Operations Division discussed the terminal identification numbers that were transacting SNAP benefits, as reflected on the charge letter attachments, during the review period. Appellant claims that the point-of-sale device located in the smoke shop side of his businesses could not have been used for SNAP transactions. To support this, he submitted a card processing statement from his bank for the month of January 2020. The statement does little to support Appellant's contention. The name on the statement is the same as the food side of the business, though the address appears to be that of the smoke shop side. It is unclear which business's transactions the statement documents. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. If these transactions are the food side of the store, the card processing statement transactions further illuminate how much significantly higher the SNAP transaction amounts were during the same time period. But also, in comparing the register receipts provided by Appellant to the terminal identification numbers on the charge letter attachments, the register receipts appear to come from both terminal identification numbers. In other words, Appellant's own evidence validates the information on the charge letter attachments regardless of where the point-of-sale devices were located in his business.

Hardship to Appellant

The Appellant contends his business is hurting with food stamps not working, especially with the COVID-19 pandemic occurring. Regarding this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of

an administrative penalty based on possible economic hardship to either the owner personally or the firm resulting from the imposition of such penalty. To allow stores to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Summary

It is the finding of this review that the attachments furnished with the charge letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the charge letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.

Upon review, the Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. The Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter were not caused by trafficking. In fact, the Appellant offered little reliable evidence to support its contentions regarding specific transactions listed in the charge letter. This is wholly insufficient to warrant reversal of the agency's permanent disqualification determination. In the absence of reasonable evidence from the Appellant, it is the conclusion of this review that the transactions listed in the charge letter attachments were, more likely than not, the result of trafficking violations committed by the Appellant.

CIVIL MONEY PENALTY

In the charge letter, Retailer Operations informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to submit the request and supporting evidence within 10 calendar days of receiving the charge letter and that no extension of time could be granted for making the request or for providing the required evidence.

Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification. Even if a timely request had been submitted, Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the EBT transaction record for Nawah Market & Deli was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further supported the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all the information available in this case, the determination by the Retailer Operations Division to impose a permanent disqualification against Nawah Market & Deli, under the ownership 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this decision.

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

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

September 25, 2020