

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

New Anchor Grocery Inc.,

Appellant,

v.

Case Number: C0202994

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of New Anchor Grocery Inc. (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against New Anchor Grocery Inc.

AUTHORITY

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

SUMMARY OF CHARGES

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from April 2017 through September 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

CASE CHRONOLOGY

The agency's record shows that FNS initially authorized New Anchor Grocery Inc. for SNAP participation as a medium grocery store on September 8, 2014. *[It should be noted that this original store type designation was based on the Appellant's estimate of total sales at the time of the firm's original SNAP application. However, based on documentation provided by the Appellant during this review process, including records of nonfood sales such as alcohol and tobacco products, New Anchor Grocery Inc. is actually a convenience store rather than a medium grocery store.]* In a letter dated October 26, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of April 2017 and September 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between November 13, 2017, and December 28, 2017, the Appellant responded to the charge letter and disputed the allegations of trafficking. As for even-dollar transactions, the Appellant stated that transactions are rounded to please the customer or for simplicity's sake. The store is a community store and always tries to keep things simple for the customer. As for multiple transactions from the same household in short periods of time, the Appellant claimed that during busy times, customers will pay for grocery items and then take those items home. At that same time, they will place an order for meat items and then come back later to pay for those items. As for excessively large transactions, these are generally orders of beef, lamb, and chicken purchased in large quantities. The firm also sells 100-pound bags of rice and large containers of oil. Finally, the Appellant claimed that after receipt of the charge letter, the owner went to the USDA website and read the rules and regulations of SNAP and will continue to read more about these subjects.

In support of its reply to the charges, the Appellant provided 135 cash register receipts from the review period and 241 pages of inventory invoices.

After considering the Appellant's reply and documentation and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 27, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked March 9, 2018, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[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, 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....

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

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

7 CFR § 271.2 states, 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...

7 CFR § 278.6(b)(1) 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) states, 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(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(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...

APPELLANT'S CONTENTIONS

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

- Approximately 80 percent of the firm's transactions are food items. The firm purchases its inventory from a variety of wholesale suppliers.
- The store's gross monthly sales are approximately 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month. Approximately one-third of the firm's sales come from SNAP customers.
- Transactions ending in a same-cents value, multiple transactions in a short period of time, or larger transactions are not summarily unusual or irregular without proof of a violation. It is only presumption.
- After receiving the determination letter, Appellant asked the Retailer Operations Division for all of the receipts that it had submitted in support of its reply to the charge letter, but

this request was refused. The Retailer Operations Division did say that it would provide all receipts to the Administrative Review Branch, if necessary.

- Appellant provided an accounting summary showing that 43.6 percent of its SNAP-eligible sales were made by customers using SNAP benefits. These sales are consistent month-to-month and correspond to the firm's purchase of inventory.
- A disqualification will pose an undue hardship for the Appellant owner and his store. The store is located in an area where customers are heavily dependent on SNAP. A disqualification will be detrimental to both the store and its customers. If the store remains disqualified, the store will have no option but to close.

In support of these contentions, the Appellant provided copies of the agency's charge and determination letters; a copy of its written response to the charges; and four pages of accounting documentation showing a monthly breakdown of the firm's total sales over the review period. Food categories listed on the accounting records include the following: "Dairy," "Drinks," "Frozen," "General Food," "Meat/Fish," "Pasta/Rice," and "Snacks." These same categories are listed on the 135 cash register receipts that the Appellant submitted to the Retailer Operations Division. It should be noted that all documentation that the Appellant provided to the Retailer Operations Division was sent by that office to the administrative review officer and was considered during this review.

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

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

Contractor Store Visit

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from an August 21, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- New Anchor Grocery Inc. is a small corner market, approximately 1,100 square feet in size, operating in the city of Brooklyn, Kings County, New York.
- At the time of the contractor's visit, the firm had no shopping carts or shopping baskets for customer use, which is not uncommon for stores of this size. Customers shopping in such

stores generally do not purchase more food than they can carry in their arms.

- The store visit photographs show one cash register for purchases of merchandise and agency records reflect the use of one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories, although on the day of the visit, the firm had very few items in the meat/poultry/fish category. According to the Appellant, the firm's walk-in cooler was broken for two or three months during the summer of 2017, which is the middle of the review period. The contractor made note of the broken cooler on its store visit report.
- Available nonfood items at New Anchor Grocery Inc. include alcoholic beverages, tobacco products, lottery tickets, and miscellaneous household merchandise.
- The checkout area consists of a very small cluttered countertop and a single cash register. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than a few small items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure. There are some items, including a few expensive items, that are priced at even-dollar amounts, while other items have prices ending in 9, such as \$0.99, \$2.49, etc. According to the contractor, store personnel claimed that transaction totals are not rounded up or down at checkout.
- The store sells a few expensive food items, including 100-pound bags of rice for \$47.00; 2.5-gallon containers of corn oil for \$26.00; a 12.9-ounce can of infant formula for \$21.00; and a 4.5-pound can of Tang orange drink for \$13.99.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a convenience store or small grocery store, where households normally purchase a limited number of items to supplement their overall dietary needs. There was very little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries, especially considering the limited staple food inventory and the availability of larger supermarkets and superstores in the vicinity.

Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar-sized competitors.

SNAP Transaction Analysis

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 484 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).**

The Appellant has stated that transactions are rounded to please the customer or for simplicity. According to the Appellant, the store is a community store and always tries to keep things simple for the customer. Additionally, in one telephone conversation between the Appellant and the Retailer Operations Division on December 21, 2017, the Appellant claimed that rounding has always been a practice of the firm. The Appellant also submitted 135 itemized cash register

receipts – all even-dollar transactions – to prove that the transactions in Attachment 1 were legitimate.

Unfortunately the Appellant’s arguments are not believable. If rounding was a way to keep things simple for the customer, then it makes no sense that the firm would have so much of its inventory with prices ending in 9. Store visit photos show boxes of soup selling for \$1.89, flour for \$3.99, a case of juice for \$9.99, fresh apples for \$1.29 per pound, ice cream for \$2.49, and so on. If rounding was truly for convenience or to keep things simple for the customer, then would it not be less complicated to price everything in the store at .50 or .00? Additionally, Attachments 2 and 3 of the charge letter show transactions ending in a variety of cents-values. This suggests that there is nothing inconvenient about having transactions end in amounts other than .50 or .00.

As for the itemized cash register receipts, these will be addressed in detail in a later section of this document. For purposes of Attachment 1, suffice it to say that this review finds the cash register receipts to be highly problematic and likely fictitious.

Without a reasonable explanation or compelling evidence to demonstrate that the transactions were legitimate purchases of eligible food, this review has little option but to conclude that the transactions listed in Attachment 1 were likely due to trafficking violations.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 50 sets of transactions (108 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The two transactions totaled exactly 5 U.S.C. § 552 (b)(6) & (b)(7)(C), an extraordinary amount for a small corner market that is little more than a convenience store. Considering the amount of food it would take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and considering that the firm has no shopping carts or baskets, it seems very unlikely that these were legitimate transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant has contended that such transactions are situations where customers will pay for grocery items and then take those items home. At that same time, they will place an order for meat items and then come back later to pay for and retrieve those items.

This contention is not believable because both sets of transactions mentioned above occurred during a time when, by the Appellant’s own admission, the firm’s walk-in cooler was broken. As such, there was very little meat onsite. The only available meat products at the time of the contractor’s visit, which occurred just a couple of weeks after the transactions above, were a few bags of frozen seafood and a few cans of meat. Accordingly, it makes little sense that a household would obtain and pay for their meat products separately, as there was very little meat in the store to begin with. Additionally, the Appellant’s inventory records show that the Appellant purchased less than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of meat from wholesale vendors during the entire review period.

It should be noted that the Appellant has offered no evidence to show that the specific transaction sets in Attachment 2 were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the questionable transactions were likely the result of trafficking violations.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 310 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a medium grocery store in the state of New York, let alone a convenience store, which the firm actually is. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a medium grocery store in New York was \$15.26. In Kings County, the average was slightly higher, at \$15.40 per transaction.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods items and other eligible foods, and considering that the firm does sell a few expensive items, such as 100-pound bags of rice, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may well be some legitimate SNAP purchases sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the absence of shopping carts and baskets, the limited overall inventory – especially meat products – and the extremely constricted checkout area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many items it would typically take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more, and considering the store's lack of shopping carts or baskets, this review finds it probable that trafficking violations were occurring at the Appellant store.

It should be noted that there are some very unusual patterns within Attachment 3. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the contractor's store visit report, the firm does not offer specially-priced bundles of groceries or meat. As such, it is highly improbable that certain transaction totals – especially large amounts – would repeat so frequently.

Other unusually repetitive amounts include 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The Appellant has stated that large transaction totals are generally orders of beef, lamb, and chicken purchased in large quantities as well as purchases of 100-pound bags of rice and large containers of oil.

Unfortunately, the evidence does not support the Appellant's assertions. As stated previously, the firm appeared to have few meat items in the store on the day of the contractor's store visit and the firm's own inventory records show that it purchased less than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of meat for the entire review period. It is certainly possible that the Appellant did not submit every inventory invoice or that some receipts were misplaced or lost by the firm, but the

store visit documentation and inventory records strongly suggest that meat purchases were not a significant part of the firm's overall business – particularly while the walk-in cooler was inoperable.

The transactions identified in the charge letter are highly unusual and substantially different from comparable stores in the area. As noted earlier, in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately, the Appellant's evidence is neither sufficient nor compelling and does not verify that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without reasonable evidence, it is the conclusion of this review that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Based on the above analysis, it is the determination of this review that New Anchor Grocery Inc. likely trafficked in SNAP benefits during the review period. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

Appellant's Documentation

As noted earlier, the Appellant submitted a large amount of evidence, including inventory invoices and cash register receipts, in an effort to demonstrate that the transactions listed in the charge letter were not trafficking, but were legitimate purchases of eligible food.

Inventory Invoices/SNAP Redemptions

The inventory invoices that were submitted by the Appellant appear to be primarily for beverages and snack foods, with occasional purchases of fruits, vegetables, and other groceries. This type of inventory is typical of a small corner market or convenience store. However, the total value of the inventory purchased (based on the Appellant's own documentation) is substantially less than the total amount of SNAP redemptions during the same period. Even when considering a 40 or 50 percent markup of the inventory, SNAP redemptions during the review period remain much higher than the available inventory. This strongly suggests that trafficking violations were likely occurring.

5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(7)(E).

Cash Register Receipts

The Appellant submitted 135 itemized cash register receipts – all of them even-dollar transactions. As noted earlier, items supposedly purchased during each transaction listed on the

receipts are divided into the following categories: “Dairy,” “Drinks,” “Frozen,” “General Food,” “Meat/Fish,” “Pasta/Rice,” and “Snacks.” Unfortunately, the items purchased are not identified any further.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Another receipt dated 5 U.S.C. § 552 (b)(6) & (b)(7)(C), looks like this:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Not only do the receipts give no indication of what was actually purchased, but they are simply not plausible. For example, with regard to the 5 U.S.C. § 552 (b)(6) & (b)(7)(C), this review has a difficult time imagining a customer purchasing 5 U.S.C. § 552 (b)(6) & (b)(7)(C) without the benefit of a shopping cart or basket. The fact that anyone would spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) during a single visit to a small corner market is highly unusual.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

This review finds that the cash register receipts were likely fabricated at the time of the transaction to give the appearance that the transactions were legitimate purchases. Unfortunately, the receipts have many of the hallmarks of a firm engaged in trafficking violations.

Trafficking Case based on EBT Data

The Appellant has stated that transactions ending in a same-cents value, multiple transactions in a short period of time, or larger transactions are not summarily unusual or irregular without proof of a violation. It is only presumption.

With regard to this contention, this review acknowledges that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. It is noted that FNS employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a) which states, 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 ...**” [Emphasis added.]

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the charge letter.

It should be noted that this reviewer has thoroughly examined the documentation and information provided by the Retailer Operations Division and found no evidence to suggest that the agency simply churned out numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores of similar size, and then performed a complete analysis before concluding that trafficking was likely occurring.

It is important to restate here that in an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. As detailed above, the Appellant's explanations and documentation do not meet this standard.

Hardship to Appellant and SNAP Recipients

The Appellant has stated that a disqualification will pose an undue hardship on the firm itself. It claims that if the disqualification is not reversed, the store will have no option but to close. The Appellant also states that the store is located in an area where customers are heavily dependent on SNAP, and a disqualification will be detrimental to the firm's customers.

With regard to the contention that the community will experience hardship if the firm is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and households are forced to use their benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, the regulations are clear that a CMP for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As for the assertion that the firm's ownership will suffer if the disqualification is upheld, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the 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, the Appellant's claims that the community will be adversely affected and that the firm may incur economic hardship based on the assessment of an administrative sanction do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Civil Money Penalty

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

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify New Anchor Grocery Inc. from SNAP participation. This data provided ample evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant firm, New Anchor Grocery Inc., under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

RIGHTS AND REMEDIES

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

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

JON YORGASON
Administrative Review Officer

August 29, 2018