

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

**New York Deli and Minimart,**

**Appellant,**

**v.**

**Case Number: C0218228**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of New York Deli and Minimart 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 in its administration of the SNAP, when it imposed a permanent disqualification against New York Deli and Minimart.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated June 27, 2019, 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 November 2018 through April 2019. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated 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 charge letter was delivered via UPS on July 1, 2019.

The Appellant requested an extension of time to reply to the charges in a telephone conversation with the Retailer Operations Division on July 10, 2019. The request was granted and the deadline to reply was extended to July 22, 2019; however, the Retailer Operations Division noted that an extension of time to request a trafficking CMP could not be extended.

In a letter postmarked on July 17, 2019, the Appellant stated that the store manager was offering weekly baskets of food at combined even dollar transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, the Appellant claimed that the store sells cold family sized meals which sell for an average price of \$25 which may account for the larger transactions. Lastly, the Appellant stated that multiple transactions were caused by customers who preordered their food and paid in separate transactions.

After considering the evidence in the case and the Appellant's contentions, the Retailer Operations Division issued a determination letter dated August 12, 2019. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of 7 CFR § 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP 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 violations of the SNAP.

In a letter dated and postmarked August 26, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

### **STANDARD OF REVIEW**

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might 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 covered in the Food & 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 § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 defines trafficking, in part, as:

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

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption ....

7 CFR § 278.6(a) states, in part:

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

7 CFR § 278.6(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.

7 CFR § 278.6(b)(2) states, in part:

- (ii) 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 as specified in § 278.6(i), 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). [Emphasis added.]
- (iii) 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. [Emphasis added.]

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from November 2018 through April 2019. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 251 transactions  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts within a set time period. This attachment lists 102 sets  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 3:** In a series of transactions, the bulk of SNAP household's remaining benefits were depleted within short time frames. This attachment lists 37 sets  
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C)
- **Charge Letter Attachment 4:** Excessively large purchase transactions were made from recipient accounts based on the observed store characteristics and recorded food stock. This attachment lists 428 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

## APPELLANT'S CONTENTIONS

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

- There is no direct evidence of trafficking as it is described in 7 CFR § 271.2. The relevant portions of the regulations indicate for trafficking to be found there needs to be evidence of the exchange of SNAP benefits for cash or consideration other than eligible food. In this case, there is no evidence other than an ALERT printout that caught hundreds of transactions that are obviously not trafficking. The ALERT system is not designed for accuracy but to penalize purchases with the stigma of trafficking charges.
- Almost all of the same cent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) which is compelling evidence that trafficking was not occurring. If trafficking were occurring, one would expect other cents values to be used. In addition, rounding a total transaction down

does not constitute trafficking which the store does for the sake of simplicity and customer service.

- Regarding the multiple transactions in short time frames, the majority of these occurred within 5 U.S.C. § 552 (b)(6) & (b)(7)(C) timeframe or series of visits over several days. A regular customer coming in once or twice a day for a couple of days is not indicative of trafficking. According to SNAP's software algorithm, the model for alleged trafficking is that customers make a purchase, then wait nearly half a day or a full day hanging around before making another transaction. In roughly half of the transactions a full day passed before the next transaction. In this neighborhood customers often hang around and then come back or walk around and remember something else that they need.
- Regarding the depletions and excessively large purchases, these transactions are to be expected in light of the nature of the neighborhood and very high volume of traffic in the store. The neighborhood relies upon the store to provide bulk food and fresh food items often not found in other grocery stores. Therefore the average transactions are larger than other locations selling only drinks and chips. One or two purchases of baby formula could easily put such a transaction on the list of suspicious transactions. Additionally customers often make large purchases towards the beginning of the month when funds are available.
- Photos provided by the Appellant show that the store has long lines, large inventory, a variety of products, bundled products and frequent and regular customers. The store also carries bulk items and pricier items typically associated with a larger supermarket.

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

## **ANALYSIS AND FINDINGS**

### **Authorization History**

The Food & Nutrition Service (FNS) authorized New York Deli and Minimart for the SNAP on January 23, 2014. During the review period of November 2018 through April 2019, the Retailer Operations Division classified the store as a convenience store. This classification was based on reported sales and observed store inventory.

The store owner signed the SNAP application for the store on December 20, 2013 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

## Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 20, 2019 store visit conducted by an FNS contractor to observe the nature and scope of the store's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- New York Deli and Minimart is approximately 2,500 square feet in size according to store personnel.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- Store personnel confirmed that no food was stored in an area outside of public view and that no food was stored offsite.
- Food items generally had prices ending in 9 cent amounts which is typical for retail food stores. The store did not have a special price structure such as ending most product prices at even dollar amounts. Store personnel confirmed that the store **did not** round prices up or down at the checkout.
- Store personnel confirmed that the store **did not** sell expensive food in bulk such as fresh meat bundles, fresh seafood specials, and/or fresh fruit and vegetable boxes.
- The checkout area consisted of a long countertop almost completely covered with displays of candy, snack foods, a display of sunglasses and some small power drinks. There was a POS device but practically no empty space for stacking purchases. This extremely limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted almost exclusively of inexpensive canned and packaged goods typical of a convenience store. The store sold a large amount of single-serving snack foods, ice cream, potato chips, candy and other inexpensive accessory food items such as carbonated sodas, coffee, tea, condiments, and spices.

Store personnel confirmed that the four (4) most expensive items sold by the store were: a 12-pack case of Snapple Tea for \$20.00; a 1 lb. 2 oz. box of Cheerios at \$5.99; an 11.5 ounce can of Maxwell House coffee for \$5.99; and a 5 pound bag of Canilla rice at \$5.55. None of these items were available in more than ten (10) stocking units. Therefore, these items did not appear to be available in large quantities to support bulk sales. There were no promotional, special, bulk, or package deal offers advertised in the store.

The store had a kitchen that prepared SNAP ineligible hot and cold food not intended for home preparation and consumption along with a booth for sitting. The stocked ineligible items included tobacco products, health and beauty aids, paper goods and cleaning products.

Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

### **Evidence of Trafficking**

The Appellant, through counsel, made the following contentions: (1) the relevant portions of the regulations indicate for trafficking to be found there needs to be evidence of the exchange of SNAP benefits for cash or consideration other than eligible food; (2) in this case, there is no evidence other than an ALERT printout that caught hundreds of transactions that are obviously not trafficking; and (3) the ALERT system is not designed for accuracy but to penalize purchases with the stigma of trafficking charges.

The Appellant also states that there no direct evidence of trafficking as it is described in 7 CFR § 271.2 and that the charges did not state whether specific transactions involved the buying or selling of SNAP benefits for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances. Therefore, the Appellant concludes that a charge of trafficking cannot be assessed against the store.

Regarding these contentions, 7 CFR § 278.6(a) does not require that the specific subpart of 7 CFR § 271.2 must be cited. Nor would it be possible to do so in a case based on inconsistent redemption data or transaction data under an EBT system. 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, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior and a comparison of stores in the area, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. Therefore, it is false to say that the case is solely based on an ALERT printout.

The legality of this method is supported by 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, evidence obtained through a transaction report under an electronic benefit transfer system ....**” [Emphasis added.]

The Appellant also cites some court cases which it believes supports its case. However, it should be noted that considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations and agency guidance promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

## **Same Cent Transactions**

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Thus, a significant percentage of the store's large dollar transactions ended in 00 cents despite the store having most food items priced at amounts ending in nine (9) cent amounts as confirmed by the store visit. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

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

The Appellant, through counsel, states the store was rounding down prices for its own convenience and customer service to impatient store customers. However, there is no evidence that the store had a special pricing policy that would cause a disproportionate number of high dollar transactions to end in 00 cents. In fact, during the store visit, store personnel specifically were asked and stated that the store did not round prices up or down.

Based on the store visit report, the Appellant's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in total purchase prices ending in 00 cents. Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a random statistical spread of ending cent ranges from 00 to 99 cents.

Consequently, when there are a disproportional amount of high dollar transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

## **Multiple Transactions by the Same Household within a Short Time Period**

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this convenience store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. This is sometimes accomplished by a retailer purchasing a card and PIN from a household and then running transactions spread out over time.

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



The Appellant states that, according to SNAP's software algorithm, the model for alleged trafficking is that customers make a purchase, then wait nearly half a day or a full day hanging around before making another transaction. The Appellant alleges that in roughly half of the transactions a full day passed before the next transaction.

The Appellant's description of the multiple transactions cited in Charge Letter Attachment 2 are not accurate and are misleading. 5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E). Even the lowest transaction amount was three to four times higher than the average transaction for this store type in Worcester County. The suspicious nature of this transaction is highlighted by the fact that the store visit showed the store did not sell items in bulk, had no shopping carts or baskets, and there was extremely limited space at the checkout counter to stack items for purchase.

The Appellant states that people in the area hang out around the store and come back to make additional purchases that they forgot to make the first time. It is true that sometimes a customer will forget an item or two and come back later to make an additional small dollar purchase. However, the transactions cited in the charge largely consisted of subsequent transactions which greatly exceeded the average transaction of a Worcester County convenience store during the review period.

It is noteworthy that **every** individual transaction cited in Charge Letter Attachment 2 exceeded the average for a Worcester County convenience store during the review period. Many of the repeat transactions ended in a same cents value and some transactions were for the same or similar dollar amounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the store inventory and infrastructure, it appears unlikely that the store had the ability to process such rapid and consecutive transactions given the lack of an optical scanner and the limited checkout space. Some of the repeat transactions occurred three or more times on the same day and are unlikely to be due to customers forgetting just one or two items. As stated previously, there is nothing special about the Appellant firm to justify it having multiple transactions much higher than the average for a Worcester County convenience store.

In conclusion, the store visit pictures show that is unlikely that SNAP customers would shop at the store and purchase such a large volume of items multiple times during a set time period. In addition, the store's small checkout area and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts and no shopping baskets for transporting food within the store which would be required for the larger dollar transactions. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

### **Depletion of Benefits**

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

The Appellant states that these transactions are to be expected in light of the nature of the neighborhood and very high volume of traffic in the store. Allegedly, the neighborhood relies upon the store to provide bulk food and fresh food items often not found in other grocery stores. Therefore the average transactions are larger than other locations selling only drinks and chips. The Appellant states that one or two purchases of baby formula could easily put such a transaction on the list of suspicious transactions.

The Appellant's contentions are not credible. The store visit report showed no evidence that the store sold bulk food, family deals, formula or an appreciable amount of fresh food. The only evidence that the Appellant sold formula, food in bulk or family deals was in pictures of signs supplied by the Appellant for the administrative review. However, none of this signage existed at the time of the store visit which indicates that the Appellant's pictures were taken **after** the charge letter and/or the determination letter in order to justify the irregular transactions cited in the charge letter.

Regarding the claim of formula sales, the store visit report and photographs do not document that the store carried any formula. In addition, store personnel at the time of the store visit stated that the most expensive items sold by the store was a case of Snapple tea at \$20, Cheerios at \$5.99, Maxwell House coffee at \$5.99 and Canilla rice at \$5.55. If the store was selling formula, store personnel would have mentioned this high price item during the store visit.

Lastly, the Appellant states that customers often makes large purchases towards the beginning of the month when funds are available. It is true that many SNAP households do shop early in the month as opposed to later in the month; however, most households do not spend all or a majority of their monthly benefits in a single day at one store. A government report on SNAP shopping patterns 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 takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Depleting one's entire allotment in a single day, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Based on a preponderance of the evidence this irregular transaction pattern is more likely than not the result of trafficking in SNAP benefits.

### **Excessively Large Transactions**

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable **not** because they exceed any regulatory limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of this convenience store's stock and facilities and are thus indicative of trafficking.

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

The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no

indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant states that these transactions are to be expected in light of the nature of the neighborhood and very high volume of traffic in the store. Allegedly, the neighborhood relies upon the store to provide bulk food and fresh food items often not found in other grocery stores. Therefore the average transactions are larger than other locations selling only drinks and chips. One or two purchases of baby formula could easily put such a transaction on the list of suspicious transactions.

As stated above, the Appellant's contentions are not credible. The store visit report showed no evidence that the store sold bulk food, formula or an appreciable amount of fresh food. The pictures of signage advertising bulk, family and formula deals supplied by the Appellant were apparently taken after the charge letter and the determination letter in order to justify the irregular transactions cited in the charge letter. It is also noteworthy that even though the pictures supplied by the Appellant showed signs advertising bulk and family deals and formula deals, the pictures themselves did not appear to show a sufficient depth of stock to sell only a few of these items which would not be enough to explain the large number of irregular transactions.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, the Retailer Operations Division determined through agency mapping systems that there were 17 SNAP authorized stores within a two-mile radius of New York Deli and Minimart during the review period. These SNAP authorized stores included 14 other convenience stores, a medium grocery and two (2) superstores. A government report<sup>1</sup> on SNAP benefit redemption patterns revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store like New York Deli and Minimart with a limited selection of staple foods. It is also noteworthy that the other SNAP authorized stores in the area, including the medium grocery store and superstores that offer a greater depth and breadth of food at likely better prices, do not exhibit the same irregular transaction patterns identified in the charge letter.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at New York Deli and Minimart compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at New York Deli and Minimart on the same day or within a few days of shopping at these larger stores. It is highly unlikely that a convenience store with a limited staple food inventory like New York Deli and Minimart would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores with a better selection and variety of staple food items at likely better prices.

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<sup>1</sup> "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

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. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and shopping baskets support the Retailer Operations Division determination. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 4 are more likely than not the result of trafficking in SNAP benefits.

### **CIVIL MONEY PENALTY**

The Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days ... the firm **shall not be eligible** for such a penalty." [Emphasis added.]

Even if a timely request had been submitted, the 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 SNAP compliance policy and program prior to the 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 Appellant's EBT transaction record in comparison with actual store circumstances was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including those cited in the letter of charges.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations

Division. Based on the discussion above, the decision to impose a permanent disqualification against New York Deli and Minimart, Appellant, is **sustained**.

### **RIGHTS AND REMEDIES**

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses your right to a judicial review of this determination. Please note that 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 you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, 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.

RONALD C. GWINN  
Administrative Review Officer

November 4, 2019