

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

Ocean Grocery & Deli, Inc,

Appellant,

v.

Case Number: C0210715

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 there is sufficient evidence to support a finding that the permanent disqualification of Ocean Grocery & Deli, Inc. (Ocean Grocery & Deli or Appellant) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP), as initially imposed by the Retailer Operations Division, was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

7 USC § 2021 and the 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 August 16, 2018, the Retailer Operations Division charged 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 January 2018 through June 2018. The letter noted that the penalty for trafficking is permanent disqualification as provided by

7 CFR § 278.6(e)(1). The letter also noted that Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant replied to the charges on August 22, 2018. Appellant denied trafficking and explained that the transactions were normal based on the unique circumstances of the store. After considering the evidence and the retailer's reply, the Retailer Operations Division issued a determination letter dated September 25, 2018. The determination letter informed Appellant that it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that Appellant was not eligible for a trafficking CMP because 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.

By letter postmarked October 2, 2018, ownership, through counsel, appealed the Retailer Operations Division's determination and requested an administrative review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That 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

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 USC § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a), (c) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 USC § 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 § 271.2 states, in part, that, 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 § 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 § 278.6(a) states:

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(e)(1) reads, 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, inter alia:

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 THE CHARGES

Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from January 2018 through June 2018. This involved the following SNAP transaction patterns which are indicative of trafficking:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual benefit accounts in unusually short time frames.
- The majority or all of individual recipient benefits were exhausted in unusually short periods of time.
- There were excessively large purchase transactions made from recipient accounts.

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking.

APPELLANT'S CONTENTIONS

In its October 2, 2018, administrative review request, and subsequent information dated October 24, 2018, Appellant provided the following summarized contentions, in relevant part:

- Ownership has thoroughly enforced strict rules and regulations with EBT transactions, including training the staff, briefing staff regarding any new updates, and displaying SNAP laws and regulations signs for both employees and customers to view.
- In addition to instructing staff to distinguish between SNAP eligible and non-eligible items, ownership has further illustrated this by posting signs in conspicuous locations which clarify that it does not serve hot food for EBT such as hot coffee, hot sandwiches, or toasted bread.
- Many customers routinely make bulk purchases to stock up for their monthly needs especially upon receiving funds in their EBT card.
- Appellant has not carried out any unlawful SNAP EBT transaction or violated any SNAP laws at the establishment.
- Appellant explained that food purchases increased 5 U.S.C. § 552 (b)(6) & (b)(7)(C)0 per month in 2017-2018.

In support of its contentions, Appellant provided the following documents:

- Thirty-two photographs;
- Twenty-five POS receipts;
- Charge letter with transactions marked off;
- Seven affidavits from customers and two from employees;
- Daily Settlement Reports;
- New York State and Local Sales and Use Tax Web Filed returns for three quarters; and

- V&R Provision, Inc. Customer History Reports that list the total purchase amount of invoices allegedly for Boars Head meat purchase.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

Store Visit

FNS authorized Ocean Grocery & Deli as a small grocery on September 11, 2014. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a June 18, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Ocean Grocery & Deli is approximately 800 square feet with no storage outside of public view.
- The checkout space is small and limited
- There were some shopping baskets but no shopping carts for customer use.
- There was one cash register and one point-of-sale device.
- There was no fresh unprocessed meat, poultry, or fish.
- There was a deli area that sold deli meat and cheese by the pound as well as prepared food.
- There were no bulk packages or any advertised specials.
- There was limited fresh produce including apples, bananas, lemons, onions, potatoes, two heads of lettuce, tomatoes, avocados, and peppers.
- Dairy included milk, cheese, butter, and yogurt.
- Frozen food included vegetables and some entrees.
- Other staple foods available for purchase were limited amount of eggs, juice, rice, bread, beans, cereal, pasta, and canned goods.
- Much of the remaining stock consisted of accessory foods such as candy, spices, and carbonated and uncarbonated drinks.
- Ineligible items included alcohol, tobacco, health and beauty products, cleaning products, and paper products.

The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items, and accessory food items. The highest priced items noted were the following: oil - \$10.99; pound of turkey breast - \$9.99; pound of cheese - \$8.99; and ice cream - \$5.99. 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 redemption patterns significantly different from similar-sized competitors.

Charge Letter Attachments

Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Charge Letter Attachment 1. There were an unusual number of transactions ending in a same cents value. During the review period, there were 73 transactions ending in a same cents value that meet the parameters of this attachment. When such patterns are unsupported by special pricing structures, they are a strong indicator of trafficking in SNAP benefits.

Appellant contends that most of its prices end in 00 and 50 cents. However, the store visit report that was completed with the cooperation of the store manager indicated that typically prices ended in 9 cents. As indicated previously, the highest priced items noted were the following: oil - \$10.99; pound of turkey breast - \$9.99; pound of cheese - \$8.99; and ice cream - \$5.99., and all clearly ended in 99 cents. It is possible that some of the smaller transactions are the result of purchasing some same cent items and this could explain some of the lower dollar same cent transactions. However, the larger transactions cited in the charge letter would most likely consist of the purchase of several relatively inexpensive items and it is unlikely that these purchases would routinely total to an amount ending in same cents. Consequently, when many transactions end in a same cents amount, it appears that these transaction amounts are contrived and in the absence of compelling evidence to the contrary, are suggestive of trafficking.

Appellant submitted photographs to show some of its even dollar prices for sandwiches and other items. However, the evidence from the store visit show that all sandwich prices ended in 99 cents and the other signage was not posted on the day of the store visit. It appears that the photographs with the even prices were created for the purpose of responding to the charges and it is not a credible explanation for the transactions conducted during the review period.

Appellant failed to provide a credible explanation for the same cent transactions listed on Charge Letter Attachment #1.

Charge Letter Attachment 2. Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment documents 23 sets of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits that meet the parameters of this scan. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

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 Appellant's stock and facilities and are therefore indicative of trafficking. Although it is not uncommon for customers to have more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. Appellant is not set up to provide for all of one's food needs and lacks an abundant depth and breadth of staple foods. The second and third transactions in each set are too large to consist of forgotten items.

Appellant explained that customers will stop the transaction in the middle to see if they have enough SNAP benefits and then conduct a second transaction. The Retailer Operations Division determined that some of the transactions were conducted too rapidly and there would be not enough time in between the transactions to ring up additional products and conduct separate transactions. In addition, it is unlikely that this pattern would be more likely to occur at Appellant but not at other nearby stores. The Retailer Operations Division compared Appellant to six nearby similar store types, and while there were 23 transactions sets conducted at Appellant during the review period, the other six stores collectively conducted only nine transaction sets that met the parameters of this scan.

Appellant has not offered any evidence to show that the transactions listed in Charge Letter Attachment #1 were legitimate purchases of eligible food.

Charge Letter Attachment 3. The majority or all of individual recipient benefits were exhausted in unusually short periods of time. The charge letter attachment lists 18 transaction sets **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. SNAP recipients do not normally exhaust their benefits in such a short period of time.

A government report on SNAP shopping patterns¹ indicates that on average SNAP households have less than one-quarter of their benefits left by the middle of the month. On the day the issuance was distributed, the average household redeemed more than a fifth of its benefit. By the first week, the average household had redeemed over half of its benefit, and by the second week, over three-quarters of it. Households redeemed about an additional 10 percent of benefits by the end of the third week (exhausting 90 percent of benefits) and ultimately redeemed 97 percent of their monthly benefits by the end of the day before receiving their next issuance. Therefore, transactions in which SNAP benefits are exhausted in one or a few transactions during a short period of time are suggestive of trafficking.

There were three separate households that conducted a transaction in the exact amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Given the stock of eligible food items available at Appellant, it is questionable what these three households purchased to total exactly **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** which exhausted their SNAP benefits in one transaction. It is likely that these transaction amounts were contrived.

¹ Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program, Mathematica Policy Research, by Laura Castner and Juliette Henke, for the U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, February 2011.

Appellant did not present any valid explanations or documentation that legitimizes these transactions.

Charge Letter Attachment 4: Excessively large purchase transactions were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The photographs from the store visit indicate that the counter space was small, and there was no fresh meat and limited fresh produce with no shopping carts. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, and snack foods. The frequency of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

The Retailer Operations Division compared Appellant to the average for small groceries in New York. Appellant's average SNAP transaction amount was 46% greater than the average transaction dollar amount for convenience stores in the State.

The Retailer Operations Division also compared Appellant to six nearby small groceries. Appellant had the greatest average SNAP transaction amount as well as the highest SNAP dollar volume during the review period compared to the other six similar stores. In addition, Appellant conducted more transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) than the other small groceries. As noted previously, the highest priced items at Appellant were a one gallon container of olive oil priced at \$10.99 and deli meats and cheeses priced at \$9.99 and \$8.99. The store does not stock fresh meats, sell bulk foods, or offer specials which might account for transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, the Retailer Operations Division considered this an indicator of trafficking considering Appellant's eligible food stock, infrastructure, and proximity to larger, better stocked stores.

When a supermarket or super store is available, it is unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a small grocery with a limited selection of staple foods like Appellant. The Retailer Operations Division determined that within a two-mile radius of Appellant there were 68 medium groceries, 19 large groceries, 28 supermarkets and 25 super stores. Thus, households who shop at Appellant have access to and do shop at large grocery stores, supermarkets and super stores, among all other types of authorized stores.

The Retailer Operations Division examined five households identified in the charge letter to analyze their shopping patterns at Ocean Grocery & Deli compared to their shopping patterns at other SNAP authorized stores. Each of these households shopped at other larger retailers during the review period. However, despite this access to better stocked stores, each of the five households conducted excessively large transactions at Ocean Grocery & Deli within a short time of shopping at a supermarket or super store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is questionable as to why households would conduct large transactions at Appellant, when these households had just visited or planned to visit larger stores that sell fresh meat, with a better selection of fresh produce and likely better prices. There is no compelling reason for customers to consider Ocean Grocery & Deli as a first choice destination to fulfill large purchases of food.

Appellant provided a Customer History Report from V&R Provisions, Inc. that are reportedly its Boars Head deli purchases. For the review period, Appellant purchases 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in deli meats and cheese. Appellant also reported that only 5% of its total sales are EBT. Given the owner's estimates, these invoices do little to support its total SNAP sales during the review period. Even with a very high mark-up, five percent of these invoices dedicated to SNAP sales do not support the total SNAP redemptions during the review period. Appellant did not submit any other invoices of food purchased to support its SNAP redemptions.

Appellant also provided its New York State and Local Sales and Use Tax Web Filed return for three quarters. Appellant also contends that its food sales have increased to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month. There was also no evidence provided to show that Appellant purchased sufficient inventory of eligible food items to support its SNAP transactions. Although Appellant's food sales did increase each quarter, the quarterly reports do not show an average of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) per month in food sales.

Using a monthly average for each quarter based on their reported food sales, it is estimated that during the review period Appellant had about 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in food sales. Using Appellant's own estimate that 5% are EBT then it appears that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would be SNAP sales for the review period. Appellant's total SNAP redemptions for the review period were much greater than this figure. The evidence submitted does not support Appellant's statements.

Counsel reports that Appellant is located in a neighborhood consisting of Middle Easterners, Russians, South Americans, and Pakistanis and Appellant carries many varieties of food to accommodate Appellant's diverse customers. This includes a large number of products imported from overseas, including kosher and Halal goods. Although Appellant submitted invoices of deli meat purchases, there were no invoices provided to support that Appellant provided a variety of ethnic foods. The photographs only show some beverages, a canned fruit or vegetable item, a packaged item that appears to be coffee, as well as candy that appears to be not made locally. The photographs from the store visit also do not support that Appellant carries many varieties of food to accommodate its diverse customers as alleged.

In summary, Appellant's layout, business structure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of evidence to legitimize 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.

POS receipts/Credit Summary Reports

Appellant provided copies of 25 POS receipts to show that there are similar credit card transactions. Appellant received the charge letter on August 17, 2019. Twenty-two of the 25 POS receipts for credit and debit transactions were dated after receipt of the charge letter. There were three POS receipts dated prior to the receipt of the charge letter. These transactions were even cents transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is important to note that customers paying with other payment sources are able to purchase non-food items including alcohol, tobacco, and other non-food items; thus it is common for the purchase amounts to be larger than food only transactions. Regardless, Appellant did not submit any evidence to support that the large dollar transactions conducted during the review period are normal. There were no receipts submitted to show that there were large dollar credit and debit transactions conducted during the review period.

There were several Credit Summary Reports that show that credit transaction totals for certain days. Some of these were submitted for the review period. As indicated earlier, households can purchase many more items with credit cards and transactions can be larger than SNAP transactions. These Credit Summary Reports are not evidence that the questionable transactions were for eligible food items only nor are they evidence that large food transactions are normal at Appellant.

Customer Affidavits

With its original reply to the charges submitted to the Retailer Operations Division, Appellant submitted five customer affidavits. The Retailer Operations Division identified the households in the State system and analyzed their transaction history. One of the households did not conduct any of the transactions listed on the Charge Letter Attachments. The Retailer Operations Division determined that the other four households transaction patterns were suspicious given that Appellant did not carry any food items priced larger than \$10.99 and did not offer any specials or bulk food sales.

With its administrative review request, Appellant submitted two customer statements. One of the customers provided an affidavit previously. The additional customer statement from J.M. stated that he has difficulty doing strenuous activity or walking too far and as a result he buys large quantities of groceries and does not have to go out too often and tire himself. The household lives at the same address as two of the other customers that submitted statements to the Retailer Operations Division. After reviewing the shopping history of this customer, it appears that he is making frequent trips to Appellant and is walking there several times a day contrary to his statement. The customer does not appear to purchase items in bulk as alleged in the customer statement. The question is whether he is making several trips to purchase groceries or is this the store's practice of breaking large transactions into smaller transactions in attempt to conceal trafficking.

In addition, this household J.M. provided medical documentation to show that he had a liver transplant and was in the hospital from April 19, 2018, through May 3, 2018, when he was discharged. It is interesting to note, that this EBT card was used seven times from May 1, through May 3, 2018, transacting 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits, when this

customer was hospitalized. Given that the transaction history does not match what the customer states, this statement does not appear credible.

Evidence

The ALERT system is a computerized fraud detection tool to identify SNAP 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 conduct an extensive analysis of 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.

The legality of this method is supported by 7 CFR §278.6(a) which states, *inter alia*, “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 documentation and evidence provided by the Retailer Operations Division was thoroughly examined. From all indications, the Retailer Operations Division obtained the EBT data (provided by ALERT), found it to be suspicious in comparison to other area stores of similar size, and then undertook a thorough investigation before concluding that trafficking was likely occurring.

Appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative actions should be reversed and that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. Appellant offered no relevant evidence to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. In the absence of compelling information or documentation weighed in comparison to the evidence provided by the Retailer Operations Division, the evidence weighs in favor of the Retailer Operations Division’s determination that SNAP-benefit trafficking substantially produced the transaction activity at issue in the present case.

CIVIL MONEY PENALTY

In the charge letter, the Retailer Operations Division informed Appellant of its right to request a trafficking CMP under 7 CFR §278.6(i). Appellant was informed that it would need to provide both 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. The criteria for a trafficking CMP in lieu of permanent disqualification is defined under 7 CFR §278.6(i) which reads, *inter alia*:

In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by **substantial evidence** [emphasis added] its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred **prior to the occurrence of violations** [emphasis added] cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an **effective** [emphasis added] personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violation

Appellant submitted photographs of the posters that is has regarding SNAP. The Retailer Operations Division determined that the “Do’s and Don’ts sticker” was not visible during the contractor store visit and therefore was most likely applied in response to the charge letter rather than an ongoing effort to educate employees on the proper handling of SNAP benefits. The Retailer Operations Division determined that Appellant was not eligible for a CMP because there was insufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program prior to the SNAP violations in this case.

With its administrative review request, Appellant, through counsel, states that ownership has thoroughly enforced strict rules and regulations with EBT transactions including training the staff of its usage, briefing regarding any new updates, and displaying SNAP laws and regulations signs for both employees and customers to view. In addition to instructing staff to distinguish between SNAP eligible and non-eligible items, ownership has further illustrated this by posting signs in conspicuous locations which clarify that it does not serve hot food for EBT such as hot coffee, hot sandwiches or toasted bread. Appellant submitted statements from two employees indicated that they have been trained and adhere to all the SNAP rules. This is not sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy to prevent SNAP violations. For example, there were no documentary evidence showing what the alleged SNAP training consisted of when it was provided to its employees or when it was actually provided. 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 Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. 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 occur as charged by the Retailer Operations Division. The determination to impose a permanent disqualification against Appellant is sustained.

The Retailer Operations Division also determined that Appellant was not eligible for a trafficking civil money penalty according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. Under review, the denial of a trafficking CMP was deemed correct and proper.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 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 the Appellant's owner resides or is 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, 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.

MARY KATE KARAGIORGOS
Administrative Review Officer

April 30, 2019