

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

**Om Shree Sai Express,**

**Appellant,**

**v.**

**Case Number: C0204091**

**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 a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Om Shree Sai Express (hereinafter “Sai Express”) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Sai Express on May 2, 2018.

**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 January 17, 2018, the Retailer Operations Division informed the Appellant that Sai Express was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In telephone responses and written correspondences received by the Retailer Operations Division on January 25, 2018, February 5, 2018, and February 12, 2018, the Appellant, through counsel,

replied to the charges therein indicating that if SNAP violations occurred during the four month review period, they were committed by two former part-time temporary employees without the Appellant's knowledge, consent, or approval. The Appellant also provided various explanations for the questionable SNAP transactions that were outlined in the January 17, 2018 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 2, 2018, informing the Appellant that Sai Express was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked May 14, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated May 21, 2018.

### **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a 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, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

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

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

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food 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)(i) states:

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

7 CFR § 271.2 states, inter alia:

Trafficking means...The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers 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(f)(1) states, inter alia:

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

7 CFR § 278.6(i) states, inter alia:

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

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

(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 penalty. [Emphasis added].

## SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from August 2017 through November 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

## APPELLANT'S CONTENTIONS

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

In the replies to the Charge Letter and in the administrative review request postmarked May 14, 2018, and in a subsequent correspondence postmarked June 11, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Sai Express.
- However, if SNAP violations occurred during the four month review period they were committed by two former part-time temporary employees without the Appellant's knowledge, consent, or approval.
- Prior to the receipt of the Charge Letter, Sai Express had not been cited for any SNAP violations since being authorized to participate in the SNAP in 2011.
- The charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program and did not arise from an investigation of the firm. For trafficking charges to be issued when a computer program flags a small number of charges and no other investigation occurred, it would be arbitrary and capricious to permanently suspend Sai Express' participation in the SNAP.
- The charges outlined in the Charge Letter do not meet the definition of trafficking as stipulated in the SNAP regulations as there is no direct evidence of trafficking.
- With regard to the multiple transactions made from individual benefit accounts in unusually short timeframes, 10 of those transactions were done on different days, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is equally plausible that these sets of transactions are legitimate purchases and not the result of trafficking.
- Regarding the excessively large purchase transactions, many of the transactions listed in Charge Letter Attachment 2 are for relatively small amounts. Of the 119 purchases flagged as excessively large in Attachment 2, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not known if all of the excessively large purchases stem from EBT or if some are from EBT cash benefits. EBT cash may be used for other purchases, including gasoline, which is sold at Sai Express. If the purchases flagged as unusually large are from EBT cash beneficiaries, then many of the unusually

large purchases may have included gasoline purchases. In addition, Sai Express is a convenience store that stocks a wide variety of food inventory such as snacks, soft drinks, energy drinks, canned goods, frozen foods, and other food items. As a convenience store, the prices of the store's food prices are higher than prices of similar products at traditional grocery stores. Also, Sai Express is located in an area where there are industrial buildings and residential housing behind it and commercial development across the highway. Of relevance is that for most of last year, there were two major construction projects being built very near the store: the redevelopment of the former Baptist Hospital site into residential and retail space and the construction of a multi-story unit residential space designed principally for student housing. These projects have brought many construction workers to visit Sai Express, many of whom are SNAP recipients. Among items purchased by these construction workers with their SNAP benefits are bottled water, energy drinks, and sports drinks, often times in case quantities to stock their coolers. The prices of these drinks are expensive. For example, Red Bull® (12 ounce size) is \$63.96; Monster® energy drink is \$48.99, NOS® energy drink is \$42.99, Rock Star® energy drink is \$38.99, Gatorade® is \$31.99, and Powerade® is \$42.99. Sai Express also carries popular snacks and other food items that have relatively high prices such as Meura® beef jerky at \$13.99, frozen pizza at \$7.99, frozen burritos at \$3.99, Ben & Jerry's® ice cream at \$5.79, and large bags of chips at \$4.39. Even milk is priced relatively high at \$5.39 per gallon and \$3.99 per half gallon.

- In order to ensure that these types of SNAP violations do not occur in the future, the Appellant is committed to implementing a compliance program which includes reviewing USDA's Retailer Training Guide with the one current store employee. In addition, the Appellant will review this information with any new employees and will provide periodic training to store employees that includes any updates to the SNAP regulations.
- The Appellant requests that FNS dismiss the permanent SNAP disqualification imposed on Sai Express and issue an official warning letter to the firm. In the alternative, the Appellant requests that a six month SNAP disqualification be imposed under 7 CFR § 278.5(e)(5) based on the personnel of the firm committing violations due to carelessness or poor supervision by the firm's ownership or management.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Signed and notarized affidavits from the Appellant and the sole employee of Sai Express attesting that trafficking of SNAP benefits did not occur at the store during the review period and that there is a specific customer who patronized Sai Express making purchases with her EBT benefits **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

## **ANALYSIS AND FINDINGS**

### **Store Characteristics**

FNS authorized Sai Express as a convenience store on November 14, 2011. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 27, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This

information obtained from the store visit was also 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:

- Approximately 800 square feet in size and it does not have a storage area/room outside of public view;
- Typical gas station convenience store layout and food stock;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- An optical scanner;
- No meat/seafood specials or fruit or vegetable bundles that might sell for high prices;
- Not a WIC Program vendor and does not stock any infant formula or infant foods;
- No specialty or ethnic foods;
- Per the store visit observations, the store stocks only two expensive food items (i.e., priced at \$5.00 and above) which are frozen pizza at \$7.99 per pizza and meat jerky at \$7.99 per 2.85 oz. package;
- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals or foods purchased by the case;
- Limited checkout counter area and it has many miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream and a limited amount and variety of pizza and Hot Pockets®;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meats, poultry, or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- Meat items include a minimal amount and variety of hot dogs, canned/potted meat, canned fish, meat jerky, and eggs;
- No kitchen in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold;
- Only one variety of fresh produce in minimal quantities (i.e., bananas);
- No frozen fruits or vegetables;
- Other staple foods available for purchase include such items as milk, margarine, cheese, soup, pasta, bread, cereal, pre-packaged sandwiches, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as carbonated and non-carbonated drinks, condiments, candy, sugar, etc.; and
- A large supply of ineligible nonfood items such tobacco products, health and beauty items, paper products, household cleaning supplies, clothing, laundry detergent, alcohol, over-the-counter medications, automotive supplies, pet food, charcoal, incense, gasoline, lottery tickets, toys, phone cards, etc.

This documentation reflects that the firm is a typically stocked gas station convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Knox County, Tennessee during the analysis period was \$5.84, reflecting that large purchases are not routinely made in such stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

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. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant’s contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Denial of Trafficking Charges**

Regarding the Appellant’s contention that it denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant’s firm, then trafficking will be considered not to have occurred and the disqualification reversed. If this is not demonstrated the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

### **Appellant Unaware of SNAP Violations**

The Appellant contends that if SNAP violations occurred during the four month review period they were committed by two former part-time temporary employees without the Appellant’s knowledge, consent, or approval. This contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Sai Express. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, family member, etc. was involved in the violative

transactions), ownership is accountable for the proper handling of SNAP benefit transactions. Prior to becoming authorized to participate in the SNAP on November 14, 2011, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. Trafficking is defined in 7 CFR § 271.2 of the SNAP regulations which states that 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... The Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that “Disqualification ... shall be permanent upon ... the first occasion of a disqualification based on ... trafficking ... by a retail food store”.

In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. The Appellant's implied contention that the violative SNAP transactions were committed by two former part-time temporary employees without its knowledge, consent, or approval cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of USDA.

### **First Time Violator**

The Appellant contends that prior to the receipt of the Charge Letter, Sai Express had not been cited for any SNAP violations since being authorized to participate in the SNAP in 2011. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.



## **Charges Based on Computer Program**

The Appellant contends that the charges of SNAP benefit trafficking are solely based upon numbers generated by a computer program and did not arise from an investigation of the firm. For trafficking charges to be issued when a computer program flags a small number of charges and no other investigation occurred, it would be arbitrary and capricious to permanently suspend Sai Express' participation in the SNAP.

Firms are chosen for analytical investigation based upon numerous detailed and rigorous mathematical algorithms. This data presents the Retailer Operations Division with a statistically valid prima facie indication of highly unusual transaction activity; the activity therein identified is not marginally aberrant, but markedly so. Properly analyzed and interpreted, the Retailer Operations Division does not contend that EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form repetitive patterns, on a comparative basis, over a period of time that ensures such activity is not simply intermittent, such activity is identified for further analysis.

Once such firms have been identified as potential compliance cases, from approximately 263,105 authorized firms nationwide, the Retailer Operations Division undertakes a detailed examination of the available transaction data and obtains further relevant information regarding the firm's business operations such as the level and condition of staple food stock maintained by the firm, the presence or absence of the firm's logistical retail wherewithal and numerous other factors pertinent to the firm's ability to legitimately process the transaction activity for which the firm has been flagged. Agency policy and procedures direct that only after a careful, comprehensive and complete analysis, from which appropriate conclusions are logically derived, will the firm be issued a Charge Letter. The firm is then given the opportunity to reply to those charges and provide any information it deems appropriate in justifying as legitimate the transaction activity detailed in the Charge Letter. In the present case, these policies and procedures are shown by the record to have been duly performed in all relevant and pertinent detail.

Moreover, 7 CFR § 278.6(a), noted above, established the authority upon which FNS may disqualify any authorized retail food store on the basis of evidence obtained through a transaction report under an electronic benefit transfer system. The Retailer Operations Division's use of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behaviors and other relevant data and information, in rendering a finding that trafficking is the most likely explanation of the transaction activity, is as valid a means of establishing evidence as that obtained through an on-site investigation and the eye witnessing of trafficking. Accordingly, the Appellant's contention that the charges are based solely upon numbers generated by a computer program is not compelling.

As indicated above, in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 27, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. The information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. FNS also considered information with regard to the analysis of household shopping behaviors and other relevant data and information

in reaching its decision. Therefore, the Appellant's contention that FNS did not visit Sai Express and conduct an in-store investigation to assess the store is unfounded.

### **Charges Do Not Stipulate Trafficking**

The Appellant contends that the charges outlined in the Charge Letter do not meet the definition of trafficking as stipulated in the SNAP regulations as there is no direct evidence of trafficking. Trafficking is defined, in part, in 7 CFR § 271.2, by the words: "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...". The Appellant is reading the regulation literally to mean that trafficking requires the buying or selling of actual *physical* items, i.e., EBT cards, card numbers and PINs, manual vouchers and signature (i.e., the SNAP benefit cards themselves), and has nothing to do with buying or selling the credits, debits or benefits associated with such instruments.

It must be noted that when the definition of trafficking was originally formulated, the SNAP (originally known as the "Food Stamp Program") utilized paper coupons which were legal tender for the purchase of eligible food items under program rules. There was no separation or distinction between the physical coupon itself and its value. Therefore, there was no reason to distinguish one from the other in the definition. The instrument and its value were simply one and the same. A \$10.00 Food Stamp coupon had a value of \$10.00, and exchanging such a coupon for cash was the same as exchanging the \$10.00 value of that coupon for cash. The value of the coupon and the coupon itself were inseparable.

The benefit delivery system has since changed. The SNAP is now an electronic benefit system in which benefit holders are issued SNAP benefit cards which are used to debit benefits contained in their electronic accounts. Unlike the old Food Stamp coupons, SNAP benefit cards do not by themselves have any value. What is of value are the benefits contained in the household's electronic account for which the SNAP card is an access instrument. Such benefits may be plentiful or completely depleted. In fact, a SNAP card is not even necessary to transact SNAP benefits, only the card number and PIN. Value in the card can be sold for cash without the physical card being sold with it or the actual card being involved in the transaction.

Although the Appellant may be correct that the charge of trafficking in this case is not consistent with the *literal* meaning of the definition of "trafficking" in 7 CFR § 271.2, which uses words that depict exchanging physical items for cash, this literal translation would not be meaningful if it meant only the exchange of the physical instrument itself void of any value. It is reasonable to assume that Congress' intentions about what trafficking meant did not involve the mere exchange for cash of paper or plastic, but involved rather the exchange for cash of the value such items had associated with and/or inherently in them. People do not traffic for the paper or plastic; they traffic for the benefits, for the value that is inherent in such items or accessible by such items.

## Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 15 transaction sets (31 total transactions)

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that the subject store would have so many suspicious SNAP transactions greatly exceeding the average SNAP transaction for convenience stores in Knox County during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is equally plausible that these sets of transactions are legitimate purchases and not the result of trafficking. However, the Appellant's contentions are not supported by available evidence.

While there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Sai Express is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, only one variety of fresh produce in minimal quantities, a limited variety and amount of canned fruits and vegetables, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for convenience stores to have purchases such as those cited, especially when Sai Express stocks only a few high priced food items so the majority of food items stocked at the store are low priced items. Again, the SNAP regulations do not govern what happens to the food once it is purchased. However, the repetitive nature of the transactions identified in Attachment 1 are vastly different in Sai Express than in any other nearby comparable firm giving credibility to the notion that trafficking is most likely taking place.

A review of client shopping data for the review period shows that clients shopping at Sai Express are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Sai Express, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 37 SNAP authorized retailers located within a 2.0 mile radius of the subject firm that can meet the nutritional needs of SNAP customers. These authorized stores include three supermarkets and two super stores. Several of these area

authorized SNAP stores are larger than Sai Express and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Sai Express during the four month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Sai Express' abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Sai Express or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. 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.

### **Excessively Large Purchase Transactions**

Charge Letter Attachment 2 lists 119 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that Sai Express would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that with regard to the excessively large purchase transactions, many of the transactions listed in Charge Letter Attachment 2 are for relatively small amounts. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. It is not known if all of the excessively large purchases stem from EBT or if some are from EBT cash benefits. EBT cash may be used for other purchases, including gasoline, which is sold at Sai Express. If the purchases flagged as unusually large are from EBT cash beneficiaries, then many of the unusually large purchases may have included gasoline purchases. In addition, Sai Express is a convenience store that stocks a wide variety of food inventory such as snacks, soft drinks, energy drinks, canned goods, frozen foods, and other food items. As a convenience store, the prices of the store's food prices are higher than prices of similar products at traditional grocery stores.

Also, Sai Express is located in an area where there are industrial buildings and residential housing behind it and commercial development across the highway. Of relevance is that for most of last year, there were two major construction projects being built very near the store: the redevelopment of the former Baptist Hospital site into residential and retail space and the construction of a multi-story unit residential space designed principally for student housing. These projects have brought many construction workers to visit Sai Express, many of whom are SNAP recipients. Among items purchased by these construction workers with their SNAP benefits are bottled water, energy drinks, and sports drinks, often times in case quantities to stock their coolers. The prices of these drinks are expensive. For example, Red Bull® (12 ounce size) is \$63.96; Monster® energy drink is \$48.99, NOS® energy drink is \$42.99, Rock Star® energy drink is \$38.99, Gatorade® is \$31.99, and Powerade® is \$42.99. Sai Express also carries popular snacks and other food items that have relatively high prices such as Meura® beef jerky at \$13.99, frozen pizza at \$7.99, frozen burritos at \$3.99, Ben & Jerry's® ice cream at \$5.79, and large bags of chips at \$4.39. Even milk is priced relatively high at \$5.39 per gallon and \$3.99

per half gallon. In support of its contentions, the Appellant provided FNS with signed and notarized affidavits from itself and the sole employee of Sai Express attesting that trafficking of SNAP benefits did not occur at the store during the review period and that there is a specific customer who patronized Sai Express making purchases with her EBT benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, the Appellant's contentions are unsubstantiated.

The Appellant contends that many of the transactions listed in Charge Letter Attachment 2 are for relatively small amounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is no indication from the store visit report that Sai Express would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. These suspicious SNAP transactions are very unusual and highly unlikely and indicative of trafficking.

The Appellant contends that it is not known if all of the excessively large purchases stem from EBT purchases or if some are from EBT cash benefits. EBT cash may be used for other purchases, including gasoline, which is sold at Sai Express. If the purchases flagged as unusually large are from EBT cash beneficiaries, then many of the unusually large purchases may have included gasoline purchases. However, all of the SNAP transactions listed in the Charge Letter Attachments include only the amounts inputted into the store's cash register by the cashier for supposed purchases of eligible food items. The transactions do not include purchases made with EBT cash benefits as indicated by the Appellant. Therefore, purchases made with EBT cash benefits do not explain the excessively large purchase transactions listed in Attachment 2.

The Appellant also contends that Sai Express is a convenience store that stocks a wide variety of food inventory such as snacks, soft drinks, energy drinks, canned goods, frozen foods, and other food items. As a convenience store, the prices of the store's food prices are higher than prices of similar products at traditional grocery stores. However, the store visit observations indicate that Sai Express is not set up to provide for all of one's food needs with no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, only one variety of fresh produce in minimal quantities, a limited variety and amount of canned fruits and vegetables, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. In fact, the Appellant itself noted that as a convenience store the food prices at Sai Express are higher than the prices of similar food products at traditional grocery stores. Considering that SNAP benefit allotments are calculated to provide households with a bare minimum of food security, it is unreasonable to believe that households would spend a large majority of their monthly benefit allotments at a minimally stocked convenience store like Sai Express on purchases of food items such as snacks, soft drinks, energy drinks, cakes/pastries, etc.

The Appellant contends that Sai Express is located in an area where there are industrial buildings and residential housing behind it and commercial development across the highway. Of relevance is that for most of last year, there were two major construction projects being built very near the store. These projects have brought many construction workers to visit Sai Express, many of whom are SNAP recipients. Among items purchased by these construction workers with their

SNAP benefits are bottled water, energy drinks, and sports drinks, often times in case quantities to stock their coolers. The prices of these drinks are expensive. For example, Red Bull® (12 ounce size) is \$63.96; Monster® energy drink is \$48.99, NOS® energy drink is \$42.99, Rock Star® energy drink is \$38.99, Gatorade® is \$31.99, and Powerade® is \$42.99. Sai Express also carries popular snacks and other food items that have relatively high prices such as Meura® beef jerky at \$13.99, frozen pizza at \$7.99, frozen burritos at \$3.99, Ben & Jerry's® ice cream at \$5.79, and large bags of chips at \$4.39. Even milk is priced relatively high at \$5.39 per gallon and \$3.99 per half gallon.

FNS does not dispute the Appellant's claim that Sai Express is located in an area where there are industrial buildings and residential housing behind it and commercial development across the highway and that last year, two major construction projects were built very near the store. However, regarding the Appellant's contention that construction workers are purchasing expensive food items from Sai Express such as cases of bottled water, energy drinks, and sports drinks, during the May 27, 2017 store visit the store owner informed the contracted Reviewer that Sai Express stocks only two expensive (i.e., costing \$5.00 and above) food items which are frozen pizza at \$7.99 per pizza and meat jerky at \$7.99 per 2.85 oz. package. In addition, the store owner noted that Sai Express does not offer meat/seafood specials or fruit or vegetable bundles that might sell for high prices. The contracted Reviewer also noted that there are no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals or foods purchased by the case.

Customers usually utilize convenience stores for the purchase of an item or two, such as bread and milk, needed for that day or because they forgot to purchase the items during an earlier shopping trip at an area grocery store such as a supermarket or super store. Customers do not usually utilize convenience stores to purchase the majority of their grocery needs. There are numerous authorized stores located within a 2.0 mile radius of Sai Express that can meet the nutritional needs of SNAP customers. Several of these stores are larger than Sai Express and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. When doing bulk shopping, customers usually drive to a wholesale club, farmers market, or large specialty store which many of these SNAP households are shopping at in addition to Sai Express. SNAP customers do not typically spend a large amount of their SNAP benefits on drinks, ice cream, chips, beef jerky, etc. when there are other required foods, such as fresh meats/seafood and fresh produce, to be purchased. Therefore, it is unlikely that SNAP customers, including construction workers, would spend a large amount of their SNAP benefits at a convenience store like Sai Express that offers a smaller quantity and variety of food products at higher prices as compared to area grocery stores such as supermarkets and super stores.

In support of its contentions, the Appellant provided FNS with signed and notarized affidavits from itself and the sole employee of Sai Express attesting that trafficking of SNAP benefits did not occur at the store during the review period and that there is a specific customer who patronized Sai Express making purchases with her EBT benefits **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. With regard to the affidavits provided by the Appellant which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied.

Although such affidavits may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect a SNAP retailer/store employee to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP retailer/store employee affidavit provided would attest to questionable transactions being legitimate.

The store visit report and photos show that Sai Express was stocked with a minimal quantity and variety of staple foods as it stocked no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, only one variety of fresh produce in minimal quantities, a limited variety and amount of canned fruits and vegetables, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has a limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without a sufficient number of these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 37 SNAP authorized retailers located within a 2.0 mile radius of Sai Express that can meet the nutritional needs of SNAP customers. These authorized stores include three supermarkets and two super stores. Several of these area authorized SNAP stores are larger than Sai Express and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Sai Express have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellant's location. While Sai Express does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other authorized stores in the area.

FNS compared the SNAP transaction activity of Sai Express during the review period to the SNAP transaction activity of two authorized convenience stores located within a 1.0 mile radius of the subject store. These area convenience stores offer a comparable quantity and variety of food items at comparable or better prices as compared to Sai Express. Sai Express conducted significantly more "multiple purchase transactions made from individual benefit accounts in unusually short timeframes" and "excessively large purchase transactions" as compared to the two comparative convenience stores. This transaction activity is a good indicator of illicit SNAP activity. FNS also compared the SNAP transaction activity of Sai Express during the review period to the average for convenience stores in Knox County, Tennessee. Sai Express' average SNAP transaction amount was significantly higher as compared to that of convenience stores in Knox County. This transaction activity is also a good indicator of illicit SNAP activity.

When comparing the number of SNAP transactions conducted at Sai Express in various transaction spreads **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** to the number of transactions conducted at

the average convenience store in Knox County, Tennessee in various transaction spreads, FNS found that Sai Express conducted a significantly higher number of SNAP transactions in each of the transaction spread amounts as compared to the average convenience store in Knox County. There is no indication from the store visit report that Sai Express would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. This transaction activity is suspicious and unusual and is indicative of trafficking.

The Appellant did not provide FNS with its vendor invoices for the foods that were purchased for Sai Express during the four month review period to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred during the review period. Therefore, FNS could not conduct an invoice analysis. It is important to note that even if the Appellant had provided FNS with all of its vendor invoices for the review period and the invoices indicated that the Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day.

Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a minimal variety of stock in the store, no fresh unprocessed meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, only one variety of fresh produce in minimal quantities, a limited variety and amount of canned fruits and vegetables, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Sai Express to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Sai Express compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Sai Express often **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those 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 hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying



large amounts of food around the store without the benefit of shopping carts and hand-held baskets. 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 the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

### **Corrective Actions**

The Appellant contends that in order to ensure that these types of SNAP violations do not occur in the future, it is committed to implementing a compliance program which includes reviewing USDA's Retailer Training Guide with the one current store employee. In addition, the Appellant will review this information with any new employees and will provide periodic training to store employees that includes any updates to the SNAP regulations.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken/will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Reassessment of Penalty**

The Appellant requests that FNS dismiss the permanent SNAP disqualification imposed on Sai Express and issue an official warning letter to the firm. In the alternative, the Appellant requests that a six month SNAP disqualification be imposed under 7 CFR § 278.5(e)(5) based on the personnel of the firm committing violations due to carelessness or poor supervision by the firm's ownership or management. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

### **CIVIL MONEY PENALTY**

As previously indicated, the May 2, 2018 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated January 17, 2018 advised

the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

### **CONCLUSION**

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Om Shree Sai Express is sustained.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to 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.

LORIE L. CONNEEN  
Administrative Review Officer

August 9, 2018