

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

One Food Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0215452

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 One Food Stop (Appellant) 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 One Food Stop on June 19, 2019.

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 April 2, 2019, the Retailer Operations Division informed the Appellant that One Food Stop 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 a response to the Retailer Operations Division of April 15, 2019, the Appellant, through counsel, replied to the charges therein denying the trafficking allegations and provided various

explanations for the questionable SNAP transactions that were outlined in the April 2, 2019 Charge Letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated June 19, 2019, informing the Appellant that One Food Stop was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked July 1, 2019, 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 July 18, 2019.

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 July 2018 through December 2018. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from the accounts of individual SNAP households within a set time period; and
- There were EBT transactions conducted that are large based on the observed store characteristics and recorded food stock.

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.

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 reply to the Charge Letter and in the administrative review request, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- With regard to the SNAP transactions documented in Charge Letter Attachment 1, it is necessary to stand behind the checkout counter to understand the purchasing habits of SNAP recipients. For instance, frequently the EBT family member is not aware of the balance amount and comes with two baskets to buy the goods in the first basket. Once the balance on the card is known after the first transaction, he/she decides whether to proceed with the second basket or not. This is commonplace when the balance is not known. Also, it is well known that most often than not, SNAP households are large families where different family members exercise their use of the card to buy goods of their preference. As it happens within every family, when the shopper gets home he/she is questioned as to what was not purchased. That in turn generates another trip to the store. Further, USDA cannot lend a blind eye to the fact that SNAP households are always an active participant in any alleged or actual trafficking transaction within a set time period. Thus, it should be expected and recognized that in the daily efforts of the SNAP household to manage and prioritize their domestic life, the household may engaged in transactions with third parties for the use of the EBT card by a third party that is totally unknown to the store owner. The store owner is not within the purview of those set arrangements made by the SNAP household and cannot deny a transaction simply because it is an unfamiliar face who came to purchase. The SNAP regulations do not impose on the store owner the duty to regulate the time intervals or frequency with a set period of time when a family can use the assigned benefits. Also, EBT households are not imposed a daily limit or structure as to when they can use their SNAP benefits.

- With regard to the SNAP transactions documented in Charge Letter Attachment 2, the characteristics and recorded food stock of the store is not always the same. The owner is always on the lookout for special food prices that he can bring to the store to offer at very attractive prices depending in market fluctuation, season, and customer preferences. Barbecue beef and burgers are offered for certain holidays, turkeys are offered for Thanksgiving as specials orders, and pork predominates for Christmas as special orders. Further, frequent deli customers ask for particular brands of cold cuts which is offered as special order when more than five pounds is involved. Special orders are also provided for sandwich and cold cut party platters. Again, it is well known that most often than not, SNAP households are large families who do not have an automobile to go to a distant supermarket. It is not unusual for families to load up with multiple items of the same, such as milk, bread, eggs, coffee, cheese, ham, roast beef, cereal, snacks, sodas, frozen pizzas, juice, sugar and the like just to reduce the amount of bags they will need to transport. Customers frequently spend a much higher mean average on debit compared to EBT purchases. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on this, it goes without saying that the store characteristics generate and cause substantial transactions to occur. During the six month review period, there were only five transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This data is not representative of the amount of business and transactions conducted by the store. Any household head who has visited any store is well aware of how quickly purchases stock up to surprising amounts. The data is not proof of trafficking in view of direct evidence to the contrary.
- It must become an established fact that the short time interval between transactions and the amount of EBT card use was caused by illegitimate purposes before a subsequent inference can be drawn that the store was benefiting from said transaction. However, USDA seems to have first elevated the EBT use frequency and purchase amounts to the indignity of trafficking, thus becoming a sound, non-speculative foundation for the second determination that the store owner was benefiting from the transactions. That single vision of the examined data is blind about the world and human behavior and does not perceive, organize, structure, and understand the experience of the household and the store owner conducting those transactions. The examination of the data cannot possibly lead to known facts or be valid as evidence as statements of eyewitnesses. There is sufficient logical analysis of the data to lead to the logical conclusion that no trafficking by the Appellant took place. It is unfair to come to the conclusion of trafficking by the store based on the stacking of unsupported inferences. No evidence, either direct or circumstantial, exists to support a finding of trafficking or that the proximate cause of the EBT transactions cited are the result of trafficking.
- The Appellant requests that the permanent SNAP disqualification imposed upon the firm be reversed.

In support of these contentions, the Appellant submitted Deposit Details for July 4, 2018 – July 13, 2018; August 13, 2018 – August 21, 2018; September 13, 2018 – September 21, 2018; October 21, 2018 – October 29, 2018; November 23, 2018 – November 30, 2018, and December 20, 2018 – December 28, 2018.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized One Food Stop as a convenience store on February 15, 2018. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 11, 2019 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 1,900 square feet in size with approximately 100 square feet of additional storage outside of public view that stocked predominantly drinks and alcohol;
- No shopping carts and 12 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;
- One checkout counter area with limited check-out counter space;
- No optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No indication from the store visit report that the firm has a special pricing structure, such as prices ending in \$.x9 and/or \$.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- Had empty/unused coolers;
- The four most expensive food items in stock were Eddy's ice cream at \$7.99 per ½ gallon (3 units in stock); El Paraiso cheese at \$6.99 per 14 ounces (3 units in stock); Libby's corned beef at \$5.99 per 12 ounces; and Rex vegetable oil at \$5.99 per 96 ounces (2 units in stock);
- No fresh or frozen meats, poultry, or seafood;
- Had a deli in which prepared, made-to-order sandwiches were prepared and sold;
- Deli meats and cheeses were not sold by the pound;
- Had a kitchen and hot foods were sold;
- Meat items included units of canned/potted meat, canned fish, hot dogs, eggs, and meat jerky;
- Dairy included milk (cow, almond, and coconut varieties), butter, and cheese;
- Fresh produce stock consisted of a few bananas, tomatoes, limes, and apples;
- Other staple foods available for purchase include such items as juice, pasta, rice, cereal, baking mix, loaf bread, flour, corn meal, and canned goods;

- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods/chips, cakes/pastries, sugar, and condiments; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, automotive supplies, lottery tickets, housewares, alcohol, gift items/souvenirs, clothing, sunglasses, jewelry/watches, cell phone accessories, charcoal, and pet food.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. 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. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

Charge Letter Attachments

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. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that the Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Repeat Transactions by the Same Household (Charge Letter Attachment 1)

This Charge Letter Attachment documents 25 sets of transactions (64 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to 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 Appellant has provided several contentions regarding the SNAP transactions documented in this Attachment, including a claim that frequently the EBT family member is not aware of the balance amount and comes with two baskets to buy the goods in the first basket. Once the balance on the card is known after the first transaction, he/she decides whether to proceed with the second basket or not. This is commonplace when the balance is not known. However, when a SNAP recipient wants to check his/her benefit balance on their EBT card, they can do so by accessing the store's EBT POS device without having to make a purchase to view the remaining balance on their card. There is also a 1-800 telephone number included on EBT cards that SNAP recipients can call to obtain the balance on their card. Therefore, the Appellant's argument is unfounded.

The Appellant contends that most often than not, SNAP households are large families where different family members exercise their use of the card to buy goods of their preference. As it happens within every family, when the shopper gets home he/she is questioned as to what was not purchased. That in turn generates another trip to the store. The store owner is not within the purview of those set arrangements made by the SNAP household and cannot deny a transaction simply because it is an unfamiliar face who came to purchase. The SNAP regulations do not impose on the store owner the duty to regulate the time intervals or frequency with a set period of time when a family can use the assigned benefits. Also, EBT households are not imposed a daily limit or structure as to when they can use their SNAP benefits.

With regard to the Appellant's contentions, although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. 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 the Appellant's stock and facilities and are therefore, indicative of trafficking.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at One Food Stop 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 or food cases for sale. The second, third, fourth, and fifth transactions in each set are too large to consist of forgotten items. In addition to the store's limited checkout space which is unsuitable for large transactions, One Food Stop has no shopping carts available to customers for transporting food within the store.

The Appellant contends that USDA cannot lend a blind eye to the fact that SNAP households are always an active participant in any alleged or actual trafficking transaction within a set time period. Thus, it should be expected and recognized that in the daily efforts of the SNAP household to manage and prioritize their domestic life, the household may engaged in transactions with third parties for the use of the EBT card by a third party that is totally unknown to the store owner.

As to whether or not SNAP recipients are allowing third parties to use their EBT cards to make purchases, this argument is little more than conjecture. The Appellant has provided no evidence

to show that sharing of EBT cards is particularly common among SNAP recipients in Fort Lauderdale, Florida. If sharing of EBT cards truly impacted One Food Stop as the Appellant suggests, it would stand to reason that this practice would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 39 SNAP authorized retailers, including 2 large grocery stores, 7 supermarkets, and 5 super stores (one of which is located 0.51 miles from the subject firm), located within a 2.0 mile radius of One Food Stop that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than One Food Stop and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at One Food Stop during the 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 (or the availability of other food stores) does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

5 U.S.C. § 552 (b)(7)(E).

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in Attachment 1 were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

Excessively Large Transactions (Charge Letter Attachment 2)

This Charge Letter Attachment lists 188 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The Appellant contends that the characteristics and recorded food stock of the store is not always the same. The owner is always on the lookout for special food prices that he can bring to the store to offer at very attractive prices depending in market fluctuation, season, and customer preferences. Barbecue beef and burgers are offered for certain holidays, turkeys are offered for Thanksgiving as specials orders, and pork predominates for Christmas as special orders. Further, frequent deli customers ask for particular brands of cold cuts which is offered as special order when more than five pounds is involved. Special orders are also provided for sandwich and cold cut party platters. It goes without saying that the store characteristics generate and cause substantial transactions to occur.

With regard to the Appellant's contentions, the food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one's food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of

food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as One Food Stop to have purchases like those included in Attachment 2 to the Charge Letter. This Attachment cites 188 EBT transactions during the six month period of investigation **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

The FNS store visit report and photos of February 11, 2019 show that One Food Stop offers a minimal stock of SNAP eligible foods with no fresh meats, poultry, or seafood, no frozen meats, poultry, or seafood, a very minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The store visit 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 limited checkout counter space and no shopping carts in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The store visit report and photos also indicate that there were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, no evidence that the store takes special food orders, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. 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. As noted earlier, the four most expensive food items in stock were Eddy's ice cream at \$7.99 per ½ gallon (3 units in stock); El Paraiso cheese at \$6.99 per 14 ounces (3 units in stock); Libby's corned beef at \$5.99 per 12 ounces; and Rex vegetable oil at \$5.99 per 96 ounces (2 units in stock). It is also important to note that the store had empty/unused coolers.

The Appellant contends that during the six month review period, there were only five transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This data is not representative of the amount of business and transactions conducted by the store. Any household head who has visited any store is well aware of how quickly purchases stock up to surprising amounts. The data is not proof of trafficking in view of direct evidence to the contrary.

5 U.S.C. § 552 (b)(7)(E). There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory. Most of the food products in One Food Stop consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods.

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

The Appellant contends that it is well known that most often than not, SNAP households are large families who do not have an automobile to go to a distant supermarket. It is not unusual for families to load up with multiple items of the same, such as milk, bread, eggs, coffee, cheese, ham, roast beef, cereal, snacks, sodas, frozen pizzas, juice, sugar and the like just to reduce the amount of bags they will need to transport. Customers frequently spend a much higher mean average on debit compared to EBT purchases. The Appellant provided several examples of debit purchases compared to EBT purchases and in support of its contentions, submitted Deposit Details for July 4, 2018 – July 13, 2018; August 13, 2018 – August 21, 2018; September 13, 2018 – September 21, 2018; October 21, 2018 – October 29, 2018; November 23, 2018 – November 30, 2018, and December 20, 2018 – December 28, 2018.

However, as noted previously, there 39 SNAP authorized retailers, including 2 large grocery stores, 7 supermarkets, and 5 super stores (one of which is located 0.51 miles from the subject firm), located within a 2.0 mile radius of One Food Stop that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than One Food Stop 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 One Food Stop have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located nearby and at several miles distance from the Appellant's location. While One Food Stop does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located in proximity to the Appellant's business offering a greater quantity and variety of products, including fresh meats/seafood and produce, at lower prices.

5 U.S.C. § 552 (b)(7)(E).

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 Charge letter. Therefore, based on this empirical data, and in the absence of credible evidence for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant's contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations.

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 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. Customers purchasing such large quantities of food items would have to hold them in their arms, use numerous hand-held baskets, 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.

Data Analysis

The Appellant contends that it must become an established fact that the short time interval between transactions and the amount of EBT card use was caused by illegitimate purposes before a subsequent inference can be drawn that the store was benefiting from said transaction. However, USDA seems to have first elevated the EBT use frequency and purchase amounts to the indignity of trafficking, thus becoming a sound, non-speculative foundation for the second determination that the store owner was benefiting from the transactions. That single vision of the examined data is blind about the world and human behavior and does not perceive, organize, structure, and understand the experience of the household and the store owner conducting those transactions. The examination of the data cannot possibly lead to known facts or be valid as evidence as statements of eyewitnesses. There is sufficient logical analysis of the data to lead to the logical conclusion that no trafficking by the Appellant took place. It is unfair to come to the conclusion of trafficking by the store based on the stacking of unsupported inferences. No evidence, either direct or circumstantial, exists to support a finding of trafficking or that the proximate cause of the EBT transactions cited are the result of trafficking.

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 256,516 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 behavior 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 speculative and based solely upon a computer generated analysis is not compelling.

Reversal of Penalty

The Appellant requests that the permanent SNAP disqualification imposed upon the firm be reversed. 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 June 19, 2019 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 April 2, 2019 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 One Food Stop 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

September 3, 2019