

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

Quality Convenience Store,

Appellant,

v.

Case Number: C0197007

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Quality Convenience Store as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a permanent disqualification against Quality Convenience Store.

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 August 18, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of October 2016 through December 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns.

The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant received the charge letter via UPS on August 22, 2017. The Appellant, through counsel, contacted the Retailer Operations Division by telephone on August 22, 2017 and requested an extension of time to respond to the charge letter. In a letter dated August 23, 2017, the Retailer Operations Division granted this request by extending the response deadline to September 11, 2017. However, the letter noted that the time to request a civil money penalty in lieu of permanent disqualification and to provide the documentation to support such a request could not be extended.

On August 24, 2017, the Appellant, through counsel, e-mailed a request for a trafficking CMP but did not provide the necessary documentation supporting such a request as required by 7 CFR § 278.6(b)(2) (ii) and (iii) and 7 CFR § 278.6(i).

The Appellant submitted a response to the charge letter in an e-mail dated September 7, 2017. This e-mail contained a statement from an employee that the irregular transactions were due to discounted sales of food items brought in from another store that the employee once owned, but was forced to close. The Appellant further stated that it would submit additional supporting documentation but would first await a response from the Retailer Operations Division to the information submitted.

After considering the Appellant's responses up to September 7, 2017 and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 8, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked September 18, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence, that the administrative action should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, *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(e)(1)(i) states:

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

7 CFR § 271.2 states, *inter alia*:

Trafficking means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food

7 CFR § 271.2 states, *inter alia*:

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

7 CFR § 278.6(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(i) states, *inter alia*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates

that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

7 CFR § 278.6(b)(2) states, *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 a penalty.** [Emphasis added.]*

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from October 2016 through December 2016. This involved the following transaction patterns which are trafficking indicators:

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

Charge Letter Attachment 2: Multiple purchase transactions were made too rapidly to be credible. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Charge Letter Attachment 3: Multiple transactions were made from individual benefit accounts in unusually short time frames. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Charge Letter Attachment 4: In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Charge Letter Attachment 5: Excessively large purchase transactions were made from recipient accounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C)

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its response to the charge letter and its request for administrative review, in relevant part:

- The Retailer Operations Division agreed to a response date extension of September 11, 2017. On September 7, 2017, the Appellant provided an initial response and noted that it intended to submit additional information. However, the Retailer Operations Division sent a permanent disqualification letter on September 8, 2017 before the agreed upon response due date. The administrative review should include an analysis of the additional information provided by the Appellant including the purchase invoices, register receipts, and witness statements.
- The store EBT register receipts provided by the store reveal significant inconsistencies in the transactions cited in the charge letter. Specifically, the household numbers in the charge letter transactions do not match the account number on the store EBT register receipts.
- The store cash register receipts match the EBT register receipts and show that these were legitimate SNAP purchases.
- The Appellant states that many of the irregular transactions were due to bulk sales of discounted food items brought from a closed store that was once owned by the manager of Quality Convenience Store.
- The charge letter attachments often show the same transaction appearing more than once. These “duplicate” transactions include items 283- 284 and 285-286 for example.
- The Appellant is aware of no regulations that limit the number of times a SNAP household may conduct a transaction.
- The Appellant is aware of no regulations that limit the amount of food that can be purchased with SNAP benefits.
- The Appellant has provided customer statements in support of the store.
- The Appellant requested a trafficking CMP in lieu of a permanent disqualification within the 10-day period after receiving the charge letter.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Quality Convenience Store for the SNAP on October 14, 2009. During the review period of October 2016 through December 2016, the Retailer Operations Division classified Quality Convenience Store as a convenience store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a January 15, 2017 store visit

conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Quality Convenience Store is approximately 700 square feet in size and operates out of a shopping strip center in an urban commercial area.
- The store had no shopping carts and two (2) handheld shopping baskets for customer use.
- The store had two (2) cash registers and one (1) point-of-sale device. One (1) of the cash registers was dedicated to lottery ticket sales.
- The store had no optical scanners or conveyor belts at the checkout.
- There was no food stored outside of public view in a storage area.
- There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or boxes of fresh fruit and vegetables for sale.
- The checkout area consisted of a small window opening within a Plexiglas barrier. There was a small countertop which offered little room to stack purchases. In front of the checkout there was a large reach-in cooler. As a result of the limited space at and near the checkout area, it was not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a convenience store with limited staple food stock. 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. Accessory food items included, but were not limited to: coffee, tea, carbonated and non-carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, alcohol, lottery tickets, household cleaning products, general houseware, health and beauty products and paper goods.

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

Determination Letter Issued Prematurely

The Appellant states that the Retailer Operations Division issued its determination letter prematurely before the previously agreed upon extended deadline of September 11, 2017. Therefore, the Appellant states that the administrative review should include an analysis of the additional information provided by the Appellant including the invoices, cash register receipts, and witness statements.

A review of the casefile supports the Appellant's contention on this issue. The Retailer Operations Division issued its determination prior to the agreed upon deadline for the Appellant to provide its full response to the charge letter. It is likely that the Retailer Operations Division mistakenly concluded that the Appellant's response of September 7, 2017 was its complete and

final response; however, the Appellant's letter clearly stated that it would be submitting additional information.

To correct this error, the Administrative Review Officer forwarded the Appellant's additional information to the Retailer Operations Division for a complete analysis. After reviewing this information, the Retailer Operations Division concluded that the additional information submitted by the Appellant would not have changed its decision to permanently disqualify Quality Convenience Store for trafficking in SNAP benefits.

Lastly, it should be noted that all of the contentions, information and evidence submitted by the Appellant is a part of this administrative review and has been considered in reaching this Final Agency Decision.

Alleged Inconsistencies in the Charge Letter Transactions

The Appellant contends that the EBT register receipts provided by the store reveal significant inconsistencies in the transactions cited in the charge letter. Specifically, the Appellant states that the household numbers in the charge letter transactions do not match the account number on the store EBT register receipts. Regarding this contention, there is a reason that these numbers are different. The partially-masked household numbers cited in the charge letter transactions are the SNAP household numbers assigned by the District of Columbia. The partially-masked account number shown on the store's EBT register receipts is the EBT card number for that SNAP household. Each household has a household number and any EBT card assigned to that household will have a different card number.

The Appellant also states that some of the same transactions appear more than once in the charge letter. The Appellant is correct that some transactions appear more than once in the charge letter. However, this is not an error. These transactions occur more than once because they display characteristics common to multiple trafficking patterns. When this occurs, the case for trafficking is stronger not weaker.

Bulk Sales

The Appellant generally states that many of the transactions cited in the charge letter were due to bulk sales. Allegedly, the manager of the Appellant store owned another store that closed. The manager then brought this inventory from the closed store to sell at Quality Convenience Store for a discounted price.

Whether or not the manager of Quality Convenience Store is the former owner of a closed store, there is no evidence in the casefile to specifically show what if any "bulk" foods were brought to the store for sale. As noted in the store visit report, there were no signs of any bulk food that would normally sell for a high price to explain the irregular transaction patterns cited in the charge letter. Even if some food was brought to the store for discounted sales, the crowded store conditions, lack of food variety, lack of expensive food, lack of conveyor belts, lack of an optical

scanner, and the lack of shopping carts all make it unlikely that any of these alleged “bulk” sales would explain the transactions cited in the charge letter.

Cash Register Receipts and Store Invoices

The Appellant states that the store’s cash register receipts when compared with the EBT register receipts show that these were legitimate SNAP purchases. A review of the casefile shows that the Retailer Operations Division reviewed a sample of the cash register receipts and found that the purchase amounts did match the transaction amounts listed in the charge letter; however, none of the receipts provided an itemized list of what was purchased during these transactions. Instead, the receipts showed items generically listed only as “NONTAX” and therefore FNS was unable to determine whether the purchases on these receipts were only for SNAP eligible food items.

The Appellant also provided 89 pages of invoices from fourteen (14) wholesale distributors in order to show that the store’s food inventory was sufficient to support its SNAP redemptions. The case record documents that the Retailer Operations Division thoroughly reviewed these purchase invoices. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Based on the analysis above, it is likely that Quality Convenience Store did not have a sufficient food inventory to support its SNAP redemptions during the review period.

It should be noted that even if the Appellant store had sufficient food inventory to justify its SNAP redemptions, this would still not explain the irregular transaction patterns described in the charge letter. It is not unusual for a store to conduct largely legitimate transactions while trafficking with a few trusted households. In these cases, a store would have sufficient food inventory but still be liable for conducting trafficking violations.

Same Cent Transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

There is no evidence that the store had a special pricing policy that would cause a disproportionate number of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

A review of the store visit pictures show that the price labels at the store end in typical retailer pricing amounts for food such as 49, 79 and 99 cents. Based on the store visit report, the Appellant’s food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store’s mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionately result in total purchase prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any

compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions made too Rapidly to be Credible

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases. The fact that the store did not have an optical scanner or calculator would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

The Appellant states that the charge letter has “duplicate” transactions and specifically noted transactions 283-284 and 285-286 in the charge letter. This was not an error on the part of the Retailer Operations Division. For this trafficking pattern, a single transaction can be part of two separate pairs of rapid and consecutive transactions and therefore occur more than once in the charge letter. When a single transaction is part of two separate pairs of rapid and consecutive transactions, the irregular nature of the transactions are amplified and further supports the determination by the Retailer Operations Division.

Despite the store’s limitations in counter space and infrastructure, it was rapidly processing consecutive SNAP transactions which included a least one excessively large transaction atypical of a SNAP convenience store in the District of Columbia. The Appellant offered no credible explanation as to how it could conduct such transactions. Based on a 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.

Multiple Transactions by the Same Household within a Short Time Period

The Appellant states that it is aware of no limits on the number of purchases that can be made with SNAP benefits. It is true that SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store’s stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not credible that a convenience store with limited staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a superstore or supermarket in the District of Columbia. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

While it is possible that a SNAP recipient could forget an item or two and make a second purchase, it is very unlikely that the second or succeeding purchase would greatly exceed the average for a SNAP authorized convenience store in the District of Columbia during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Appellant offered no credible explanation for this irregular transaction pattern.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. In addition, the store's small checkout window and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts for transporting food within the store. 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.

Exhaustion of Benefits

5 U.S.C. § 552 (b)(6) & (b)(7)(C). SNAP recipients do not normally exhaust or nearly exhaust their benefits in a single large transaction or through multiple transactions within a short period of time.

The Appellant states that it is aware of no regulations that limit the number of times a SNAP household may conduct a transaction. It is true that SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in only a day or two. Depleting one's entire allotment in one

¹ "Analysis of EBT Benefit Redemption Patterns: Methods for Obtaining, Preparing, and Analyzing the Data," report prepared by Abt Associates for the Food and Nutrition Service, USDA, November 2005.

or two days, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

In addition, the Appellant does not explain how the store is conducting transactions that are many times higher than a SNAP authorized District of Columbia supermarket or superstore. Based on a preponderance of the evidence this irregular transaction pattern is more likely than not the result of trafficking in SNAP benefits.

Excessively Large Transactions

The Appellant states that it is aware of no regulations that limit the amount of food that can be purchased with SNAP benefits. It is true that households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This average transaction is also higher than the average SNAP purchase for a supermarket or superstore in the District of Columbia during the review period. The substantial number of high dollar purchases atypical of a SNAP authorized convenience store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area. However, the Retailer Operations Division determined that within a one-mile radius of Quality Convenience Store there are eight (8) SNAP authorized stores. Included in these eight (8) stores is a superstore located 0.83 miles away. A government report on SNAP benefit redemption patterns² revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a convenience store with very limited staple foods like Quality Convenience Store.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The Appellant submitted six (6) statements from SNAP households who allegedly shop at Quality Convenience Store and these statements were thoroughly reviewed by the Retailer Operations Division. The statements included a signed and dated form likely developed by the

² "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

Appellant which generally stated that these households frequently shopped at the store due to its convenience and discounts. Only three (3) of the six (6) households provided an EBT card number which could be matched to transactions at the store. Two (2) of these households were infrequent shoppers at Quality Convenience Store. Only one (1) household was determined to be a frequent shopper at Quality Convenience Store with irregular transactions cited in the charge letter; but that household also had access to supermarkets and superstores. In conclusion, the evidence supports that the Retailer Operations Division properly concluded that these statements did not explain or justify the irregular transactions cited in the charge letter.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four (4) households identified in the charge letter to analyze their shopping patterns at Quality Convenience Store compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Quality Convenience Store often within a few days of shopping at supermarkets and superstores. It is highly unlikely that a convenience store with limited staple foods would have legitimate SNAP transactions comparable or greater than these larger and better stocked supermarkets and superstores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the Plexiglas barrier and small turnstile window, the limited availability of counter space for checking out and the lack of shopping carts support the Retailer Operations Division determination. It is not plausible that the store's customers are carrying large amounts of food around the store with no shopping carts. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 5 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

Although the Appellant timely requested consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) it did not timely submit any supporting documentation. 7 CFR § 278.6(b)(2) states, in part:

*(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). **This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).** [Emphasis added.]*

*(iii) **If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its***

eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty. [Emphasis added.]

As a result of its failure to timely submit supporting document and evidence within 10 days of receiving the charge letter, Quality Convenience Store is not eligible for a trafficking CMP. Therefore, the Retailer Operations Division's decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Quality Convenience Store, Appellant, is sustained.

RIGHTS AND REMEDIES

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

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

RONALD C. GWINN
Administrative Review Officer

November 21, 2017